

(1966) 04 AP CK 0010

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No. 2131 of 1965

K.V. Subba Rao

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 08-04-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1
Defence of India Rules, 1962 — Rule 30, 30(1)

Citation : AIR 1967 AP 202 : (1967) CriLJ 845

Hon'ble Judges : Venkatesam, J; Sharfuddin Ahmed, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; Advocate-General, for the Respondent

Judgement

Sharfuddin Ahmed, J.

(1) This is a petition challenging the order of detention made by the Government of Andhra Pradesh on the 10th of November, 1965 under the Defence of India Rules, 1962 against the petitioner and seeking his release by an order in the nature of habeas corpus u/s 491 Criminal Procedure Code. The order, G.O. Ms. No. 2012 (General Administration SCD Department) dated 10th November, 1965 is to the following effect:

"Whereas the Government of Andhra Pradesh are satisfied with respect to the person known as Shri K.V. Subbarao son of Sri Veerayya that with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence and the efficient conduct of military operations, it is necessary to make the following order:-

Now, therefore, in exercise of the powers conferred by sub-rule (1) of Rule 30 of the Defence of India Rules, 1962, the Governor of Andhra Pradesh hereby directs that the said Sri K.V. Subbarao be detained.

(By Order and in the name of the Governor of Andhra Pradesh)

Sd:K.N. Anantaraman. 10-11-1965 Chief Secretary of Government."

(2) The petitioner in his affidavit stated that with the proclamation of emergency by the President of India under Article 352 of the Constitution on 26th October, 1962 the citizens were debarred from enforcing certain fundamental rights under Articles 14, 21 and 22 of the Constitution while the emergency measures continued to be operative. The Supreme Court of India while dealing with the detentions in 1963 held that in a democratic State the effective safeguards against such abuse of executive powers, whether in peace or emergency, is ultimately to be found in the existence of enlightened, vigilant and vocal public opinion. This was the trend of views generally felt that the members of legal profession should take the lead to safeguard the fundamental rights of the citizens and to raise their voice against encroachment on such rights by the executive. In compliance with and in response to these calls the petitioner began to address public meetings in protest of detentions made under void laws and set up a committee for the preservation of civil liberties under the name of "Andhra Pradesh Civil Liberties Association", the other two prominent members being a medical practitioner and another lawyer from Khammam. As the movement gained momentum, the local Congress leaders became apprehensive and when the Chief Minister of Andhra Pradesh visited Khammam in April, 1965 the petitioner & the party were referred to as a menace to the ruling party and a representation was made by J. Vengal Rao and S. Sidda Reddy on behalf of the District Congress Committee to stifle their voice. The Chief Minister promised to look into the matter. Later on 20th June, 1965 a convention was held at Vijayawada under the presidenship of Sri N.C. Chatterjee in which about 2,000 persons participated as delegates and more than 50,000 persons participated in the public meeting. The petitioner was elected to be one of the vice- presidents while the medical practitioner and other lawyers were elected as members of the executive in the said convention. The petitioner was directed to address meetings to raise a voice of protest against the excesses of the executive. Accordingly on 7-11-1965 the petitioner addressed a public meeting at Surya pet which was attended by about 15,000 persons. The local Congress leaders including the State Congress Ministers and the Chief Minister became restive and the Chief Minister seems to have taken a decision on or before 10-11-1965 to punish the petitioner and his colleagues by detaining them and thus preventing them from raising an effective public voice against the curtailment of civil liberties. It is under these circumstances that the impugned order was made.

(3) It was further urged that the order was mechanical in form and there was no proper delegation to the Chief Secretary as he is not a competent authority for issuing such orders. Further, the petitioner claimed that he had actively participated in the defence of India and had in no way obstructed the conduct of the military operations. His further contention is that he did not belong to any political party and that had been only penalised for attempting to create an enlightened public opinion against the excesses of the executive. The statement by the Secretary of the Andhra Pradesh Congress Committee subsequent to his

detention that the Civil Liberties Conventions are no other than cells of China and Pakistan is false and absurd. The Secretary who is personally ill-disposed towards the petitioner along with J. Vengal Rao was successful in prevailing upon the Chief Minister for issuing the orders of detention. The recitals in the detention order are untrue and the order was not made in exercise of the powers under the Defence of India Act or the Rules made thereunder.

(4) The last contention is that the detention was in bad faith for collateral purposes with false recitals to the knowledge of the State Government to curb the voice of the petitioner against the excess of the State Government. In view of all these allegations it was prayed that the petitioner be set at liberty from illegal detention in the exercise of the powers vested in this court u/s 491 Cr. P.C. or under Article 226 of the Constitution.

(5) In the counter affidavit filed by the Chief Secretary on behalf of this State Government it was stated that the petitioner's activities were being watched from a long time before any action was taken against him. The material that came in possession of Govt. clearly established that the petitioner's activities had been anti- national and prejudicial to the defence of the country. Being satisfied that his activities were prejudicial to the interests of India and civil defence and effective conduct of military operations the detention order was made under Rule 30(1) of the Defence of India Rules.

The allegation of the petitioner that merely because he was taking part in the civil liberties' movement he was detained, is not correct. That movement has been in existence in the country from considerably a long time. The leftist faction of the Communist Party of India were trying to exploit the name of the organization to propagate their ideologies. Quoting part of speech made by the petitioner at a meeting held at Vijayawada, wherein the petitioner is alleged to have stated that the left Communist Party in India was established to root out the vestiges of colonialism in India and also to eliminate the feudal system which was prevailing in the country and to establish the proletarian Government, it was urged that the Civil Liberties Movement was intended only to extoll the Leftists' ideologies and prejudice the minds of the people against defence activity in the country.

It was stressed that the order of detention of the petitioner has absolutely no political motive behind it as alleged by him. The order was made after examining the material against the petitioner and after being convinced that his activities were anti-national. The order was made with the approval of the Chief Minister who is in charge of the concerned portfolio. There was nothing irregular in the form or contents of the order. It was further averred that the Government had information that the petitioner had addressed a number of party meetings of the left faction and that he had been indulging in activities prejudicial to the defence of India and Civil defence and, therefore, it was necessary to detain him. This step had been taken after carefully examining the activities of the petitioner and no other consideration except the defence of country and the safety of nation

was allowed to influence the decision of the Government in invoking R. 30(1)(b) of the Defence of India Rules.

(6) Lastly, it was claimed that the matter as to whether the activities of an individual are anti-national and prejudicial to the interests of the nation lay exclusively within the jurisdiction of the Government and was, therefore, not justifiable. A reply affidavit was filed by the petitioner reiterating the stand taken by him in the earlier affidavit.

(7) After the arguments on behalf of the petitioner were closed, the additional counter-affidavit was filed by the Chief Minister stating with reference to the specific allegations in paras 4, 6, 11, and 15 of the original affidavit filed by the petitioner. It was mentioned therein that the allegation made by the petitioner that on a representation made by Sri J. Vengal Rao and Sri Sidda Reddy the Chief Minister had promised to look into the matter was not correct and to the best of knowledge of the Chief Minister the petitioner was not referred to as a menace in any type of meeting or even conversation in which he had participated. It was denied that as a result of Public response the Ministers or the Chief Minister became restive. The other allegations were also totally denied and it was stated that the Government had reliable information which was not possible to reveal that the petitioner and some others were using the cloak of the Civil Liberties Movement for their secret activities against the interests of the State in the matters of the defence of India, civil defence and the efficient conduct of military operations.

(8) The petitioner submitted a reply affidavit to this additional counter- affidavit and objected to the filing of the counter-affidavit at such a late stage. He laid emphasis on the fact that the Chief Minister did not specifically mention that he was the satisfying authority who had taken the decision of his detention and not merely acted as an approving authority. The main ground urged by the petitioner is that the Chief Minister did not act as the satisfying authority and acted merely as an approving authority, which is contrary to the letter and spirit of detention order under the Defence of India Rules. Secondly, the order is bad as it does not conform to the rules. Further, the recitals in the order are not genuine and are made mala fide on extraneous considerations.

(9) Rule 30 of the Defence of India Rules, 1962 empowers the Central Government or the State Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of India and Civil defence, the public safety, the maintenance of public order, India's relations with foreign powers, the maintenance of peaceful conditions in any part of India, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community it is necessary so to do, it may make an order directing him to be detained.

(10-12) In the detention order served on the petitioner it has been recited that

with a view to prevent him from acting in any manner prejudicial to the defence of India and civil defence and the efficient conduct of military operations he should be detained. In the counter filed by the State Govt. it was stated that the activities of the petitioner were antinational and prejudicial to the interests of the country and the word "anti-national" has been repeated more than once. Secondly, his acts have been said to be prejudicial to the safety of the country & that he had been indulging in activities prejudicial to the interests of India and civil defence. Commenting on these slight deviations in the recitals of the order and affidavit, the petitioner has contended that the authorities had not satisfied themselves as to whether his activities were anti-national or prejudicial to the defence of India, civil defence and efficient conduct of military operations. According to him while in the detention order emphasis has been laid on his acting in a manner prejudicial to the defence of India and efficient conduct of military operations in the affidavit, his conduct was described as anti-national and no reference has been made to the efficient conduct of military operations.

(13) No doubt the words used to indicate the prejudicial activities of the petitioner have not been repeated in the affidavit filed by the Government and there is no reference to the efficient conduct of military operations in the affidavit, but it cannot be said that the order is bad on that ground. What has been mentioned in the order is that with a view to prevent the petitioner from acting in any manner prejudicial to the defence of India and Civil defence and the efficient conduct of military operations his detention has been ordered whereas in the affidavit the word "anti-national" has been used. If the action of citizen be one prejudicial to the interest of his own State, his activities can be said to be anti-national. The word "anti-national" is of considerably wide scope and would be attracted to all activities prejudicial to the maintenance of public order, India's relations with foreign powers, maintenance of supplies etc., mentioned under Rule 30. So that when a State is engaged in war to defend its integrity, any attempt on the part of an individual to prevent recruitment to the Armed Forces would be anti-national as it would be prejudicial to the defence of that country. The activity can be described as being anti-national or prejudicial to the defence of the country. The word "anti-national," therefore, covers all such activities and much emphasis cannot be laid on the fact that the word "anti-national" has not been used in the detention order.

Perhaps if the detention order had referred to the activities prejudicial to the defence of India and in the affidavit it was averred that the alleged acts were likely to strain India's relations with foreign powers it could be argued that there was a material discrepancy which would warrant the inference that the order has been made without due consideration. But no such inference can be drawn in the instant case. As observed above, the word "anti-national" can be held to cover acts prejudicial to the defence of India and efficient conduct of military operations.

(14) As a corollary to this contention it has been urged that the order was made

without being duly satisfied by the Minister incharge of the Portfolio concerned and the satisfaction of the Government of Andhra Pradesh as contemplated under Rule 30 is wanting ex facie. In Paras 7 and 8 of the affidavit it was stated that the order was merely mechanical in form and there was no proper delegation to the Chief Secretary to issue orders under the defence of India Act and the Rules made thereunder. In the Counter-affidavit it was submitted as follows:

"After examining the material against the petitioner and after being convinced that his activities are anti-national, the Government with the approval of the Chief Minister who is incharge of the concerned portfolio issued orders for his detention. It is normal practice with the Government to use cyclostyled forms while communicating similar or same orders to a large number of persons. Using cyclostyled papers is not indicative that the orders are mechanical or each case has not been separately and properly examined..."

(15) It was also pointed out that the orders issued by the Chief Secretary were in consonance with the business rules. The petitioner has made much of the fact that the orders were issued by the Government with the approval of the Chief Minister as being contrary to the spirit of the rule which provides for the satisfaction of the State Government. His argument seems to be that some one else had recommended his detention and the Chief Minister had merely acted as an approving authority. We do not think that this argument is entitled to any weight, for even if the move for his detention was initially made by some authority, the Chief Minister could not have approved of it without applying his mind to the report received by him. The approval without being satisfied can have no meaning. Therefore, much emphasis cannot be laid on the averment that the order was issued by the Government with the approval of the Chief Minister. Undoubtedly the Chief Minister is in charge of the portfolio and the order by the Government could only have been made with his approval. Similarly, though the practice of issuing cyclostyled forms has been deprecated, it could not be said that the order was merely mechanical. The competency of the Chief Secretary to issue orders in the name of the Governor cannot be questioned. It is in strict compliance with the procedure laid down in the Government business rules.

(16) The next submission made by the petitioner is that the recitals in the affidavit are not genuine as they are based on extraneous considerations. According to him certain persons who were ill-disposed towards him had prevailed upon the Chief Minister to detain him and consequently the said order was made against him. In para 4 of the affidavit it was stated that when the Chief Minister visited Khammam in April 1965, the petitioner and his group were referred to as a menace to the ruling party by J. Vengal Rao and P. Sidda Reddy on behalf of the District Congress Committee, and a request was made to him to curb their voice. The Chief Minister announced in the public meeting that he will look into the matter. This allegation was denied generally by the State Government in the affidavit filed by the Chief Secretary, but in the additional

affidavit the Chief Minister specifically did not admit it to be true to the best of his recollection.

The second allegation is that when at the meeting held on 7-11-1965 at Suryapet about 16,000 persons responded to the call of the petitioner, the State Congress leaders and the State Congress Ministers including the Chief Minister became restrive. The Chief Minister appears to have decided on or before 10-11-1965 to punish the petitioner and his colleagues. This was also specifically denied by the Chief Minister and as it is apparent from the wording of the allegations, the charge is vague and seems to be based on surmises. There is no indication as to how the petitioner became aware of the fact that the Chief Minister and others had become restive and made the decision to detain him and his colleagues. In para 11 it has been mentioned that one J. Vengal Rao who bears malice towards the petitioner prevailed upon the Chief Minister to detain him. Even this fact has not been conceded and how J. Vengal Rao was ill-disposed towards the petitioner and what hold he had on the Chief Minister has not been stated.

(17) In para 15, the 4th allegation is that the detention is made in bad faith for collateral purposes with false recitals to the knowledge of the State Government. In the counter-affidavit this allegation has been specifically refuted and it has been stated that the petitioner was detained merely because he was indulging in activities prejudicial to the defence of India and Civil defence on the basis of credible and reliable information and reports, the nature of which could not be divulged in the public interest.

(18) Thus, the oblique motives ascribed to the Government have been specifically controverted. Apart from that, it would be noticed that all the allegations of mala fides against the State are vague and indefinite and no material has been produced to substantiate the said allegations. No doubt in regard to the first allegation two affidavits have been sought to be filed at the close of the arguments stating that they were filed earlier but were kept by the jail authorities. The State Government had no opportunity to rebut the said affidavit. Therefore, they cannot be looked into in support of the contentions advanced by the petitioner. Even otherwise, they do not seem to support the case of the petitioner as none of them claims to have heard the conversation which ensued between the Chief Minister and Sidda Reddy and others. It is well settled that an order of detention can only be challenged on the ground of malice and the Government is not bound to disclose the details of the material on which the satisfaction of the detaining authority was obtained vide the decision in Moturu Hanumantha Rao Vs. Government of Andhra Pradesh, . It was, therefore, incumbent on the petitioner to establish mala fides on the part of the Government to secure his release if that was the only ground on which the order against him was made. A plea of such a nature is to be made by proper pleadings at the initial stage and should not be vague and indefinite. In the instant case, a careful perusal of the averments made in the affidavit would show

that apart from the incident said to have taken place at Khammam in April 1965 no other allegation can be said to be definite or based on actual information. In regard to the incident at Khammam viz., the Chief Minister's promise to look into the matter, a counter affidavit has been filed denying its correctness. Even otherwise, the mere promise by the Chief Minister to look into the matter would not warrant the inference that he acted with any ulterior motive. The other averments are based more or less on surmises. We are, therefore, of the opinion that the petitioner has not been able to make out a case of mala fides against the orders of Government.

(19) In the case of Makhan Singh Vs. State of Punjab (and connected appeals), , it was held by the Supreme Court that a mere allegation that the detention is mala fide would not be enough and the detenu will have to prove the mala fides.

(20) Having regard to the material on record we are of the view that the petitioner has failed to prove mala fides. Accordingly the petition is dismissed.

(21) Petition dismissed.