
(1992) 08 MAD CK 0024

In the Madras High Court

Case No : Writ Petns. No's. 4230 and 5088 of 1992

Ms. Dhanam and another

APPELLANT

Vs

District Magistrate and Collector of North Arcot Ambedkar
District Vellore and others

RESPONDENT

Date of Decision : 29-08-1992

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3
Constitution of India, 1950 — Article 22, 226
National Security Act, 1980 — Section 3

Citation : (1993) CriLJ 1716

Hon'ble Judges : N. Arumugham, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : A. Ramesh for M/s. Ram and Ram and R. Rajasekaran, for the Appellant; S. Shanmughavelayutham, Assistant Public Prosecutor, for the Respondent

Judgement

K.M. Natarajan, J.—W.P. No. 4230 of 1992 is filed under Art. 226 of the Constitution of India, by one Dhanam, mother of the detenu

Chinnathambi, seeking for the issuance of a writ of Habeas Corpus quashing the order of detention dated 19-2-1992 and set the detenu at liberty.

2. W.P. No. 5088 of 1992 is filed by the detenu himself under Art. 226 of the Constitution of India seeking for the issuance of a Writ of Habeas

Corpus quashing the order of detention dated 7-2-1992 and set him at liberty. Since the impugned orders were challenged on same ground, by

counsel they were clubbed together and disposed of.

3. The detenus in both the petitions came to the adverse notice as forest offender in view of the single case referred to in the preamble of the

grounds of detention and was detained on the basis of the ground case in the

respective order by the District Magistrate and Collector, North

Arcot Ambedkar District, Vellore, in exercise of the powers conferred in S. 3(1) of the Tamil Nadu Prevention of Dangerous Activities of

Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Officers and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982),

hereinafter referred to as the Act, with a view to preventing them from acting in any manner prejudicial to the maintenance of public order.

4. The facts which led to the passing of the impugned orders are set out in detail in the respective grounds of detention and they were served on the

detenus. Hence, we do not propose to reiterate the same once again here, especially in view of the limited plea taken in these petitions. Though

various grounds were alleged in the affidavits filed accompanying the writ petitions, the learned counsel for the petitioner in W.P. No. 4230 of

1992 confined his arguments on ground No. (F) wherein it is contended that the detention order directing the detenu to be detained and kept in

custody is a bald one and it does even contain the category of offender to which the detenu belongs. In the absence of the nature of the offender or

the category of which the offender belongs, the detention order passed by the District Magistrate and the Collector is one without application of

mind and the subjective satisfaction arrived at by the detaining authority is again without application of mind. The category of dangerous activity

sought to be prevented is not mentioned in the detention order passed by the detaining authority and hence the detention order has to be quashed

on this ground alone. In W.P. No. 5088 of 1992 though the above ground has not been specifically taken the learned counsel for the petitioner,

Mr. R. Rajasekaran adopted the said ground taken in W.P. No. 4230 of 1992 and prayed for quashing the order of detention on the said ground.

5-6. Though no counter was filed on behalf of the respondents, we proposed to hear both the parties as the question raised in these writ petitions

is about the interpretation of the relevant provisions of the Act and the detention order in both the cases. The learned counsel for the petitioner, Mr.

A. Ramesh drew our attention to S. 3(1) of the Act and Illustration (2) and submitted that it is not sufficient if it is stated that the order is passed

only with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, and the order must reflect the

satisfaction arrived at by the detaining authority as to the category to which the detenu belonged and that the failure to do so would vitiate the order. He would submit that even though the grounds of detention contain the subjective satisfaction with regard to the category to which the detenu belongs, unless it is mentioned in the detention order, the detenu is deprived of making effective representation against the order, as he was not informed as to the category under which he was classified and was detained. In this connection, he invited the attention of this Court to certain case laws in support of his contentions.

Per contra, the learned Additional Public Prosecutor submits that in both the cases the detention order as well as the grounds of detention were served together at the same time to the detenu concerned and their acknowledgments were obtained. A conjoint reading of both the detention order and the grounds of detention will clearly show under what category, they were detained and as such there is no justification in the contention put forward on behalf of the detenus that the failure to mention the category to which they belong in the detention order would deprive them from making effective satisfaction as the detention order does not reflect the satisfaction arrived at to which category he belongs. The learned Additional Public Prosecutor also relied on certain decisions in support of his contentions.

7. That the detenus in both the cases were served, with the respective detention order as well as grounds of detention together at the same time while they were detained is not disputed by the learned counsel for the petitioner in both the petitions. S. 3(1) of the Act provides that the detaining authority is empowered to pass an order of detention after drawing subjective satisfaction that the detenu falls under any one of the six categories of persons who are liable to be detained and after coming to the conclusion on the materials the necessity of detaining a person with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Illustration (2) referred to by the learned counsel for the petitioner is also to the same effect that a detention order could be passed with a view to preventing a person from acting in any manner prejudicial to the maintenance of public order if he falls under anyone of the six categories of persons referred to therein. In both the cases, in the grounds of detention the detaining authority first came to the conclusion on the adverse

case that the detenu is a forest offender and thereafter on the basis of the ground case and on the materials placed before him arrived at the subjective satisfaction for passing the impugned orders of detention. In this connection, it is appropriate to rely on the decision cited by the learned Additional Public Prosecutor in *Devji Vallabhbhai Tandel Ors. Vs. Administrator of Goa, Daman and Diu and Another*, . In the abovequoted decision, the contention was that the Gujarati translation of the order was not supplied to the detenu. As the detenu cannot speak or write in a language other than Gujarati and since the order of detention was not properly served, the order is vitiated. Admittedly the order of detention was in English which was served on the detenu, as per the Annexure "A". But the Annexure "B" which contains the grounds of detention together with the materials on which the grounds were based was in Gujarathi. It was contended on behalf of the Administrator who passed the order that the detenu by his own admission knows Gujarati and the grounds of detention have been communicated to the detenu in Gujarati language, that the grounds of detention was also enclosed along with the order of the detention and that the failure to furnish Gujarati version of the order of detention is not fatal. While upholding the said contention, the Apex Court, held as follows (para 8) :-

So far as the non-supply of the Gujarati version of the order as per Annexure "A" is concerned, in our opinion, there has been no violation of Art. 22(5) or any other law. The ORDER as per Annexure "A" was a mere formal recital of S. 3(1) of the COFEPOSA, showing the provision of law under which the order of detention has been made. Although the section of the COFEPOSA has not been mentioned in the last but two paragraphs of the ""grounds"", it has been stated that the detenu engaged himself ""in smuggling goods and that there is sufficient cause to pass detention order against you with a view to preventing your from smuggling goods"", which was in Gujarati. It cannot, therefore, be said that the detenu was in any way handicapped in submitting his representation, or there has been any violation of Art. 22(5) of the Constitution.

It is clear from the above decision that the order of detention was only a mere formal recital of S. 3(1) of the Act showing the provision of law under which the order of detention has been made and if the grounds of

detention was served along with the detention order and the grounds of detention contained the subjective satisfaction it is not open to the representation and consequently there has been a violation of Art. 22(5) of the Constitution of India. The learned Additional Public Prosecutor also cited a decision of the Supreme Court, which was rendered by a Constitutional Bench, in *Ujagar Singh Vs. The State of The Punjab*, . In that case, one Ujagar Singh was originally arrested on 29-9-1948 and detained under the East Punjab Public Safety Act. But, subsequently he was released on 28-3-49 and on the same day, there was an internment order against him and on 29-9-1949 he was rearrested. On 2-3-50 an order of detention under the Preventive Detention Act, 1950, was served on him on 3-4-1950 he was served with the grounds of detention dated 11-3-1950. Additional grounds were also furnished in July, 1950. In the case of Jagjit Singh, he was arrested on 24-7-1948 under the provisions of the Punjab Safety Act, 1947. A fresh detention order dated 14-5-1949 was served on him after the East Punjab Public Safety Act, 1949 came into force and he continued to be kept in jail. Grounds of detention were given to him on 7-9-1949. A fresh order of detention under the Preventive Detention Act 4 of 1950 dated 2-3-1950 was served on 7-3-1950. Grounds of detention dated 11-3-50 were served on him on 3-4-1950. Additional or supplementary grounds were served on 5-8-1950. One among the several contentions was that the grounds were not given as soon as may be, which is required under S. 7 of the Act; and as an unusually long period of time elapsed between the order of detention and the giving of the grounds, the detention must be held to be unlawful after the lapse of a reasonable time. Yet another ground was that the grounds given originally were so vague that they could not be said to be grounds at all such as would enable the detenu to make any representation against the order. It was also submitted that supplementary grounds could not be furnished and should not be taken into account as it was served after a long interval. While considering the said submissions. Their Lordships observed in para 11 as follows :

It was held by a majority of the judges in case No. 22 of 1950, (a) that mere vagueness of grounds standing by itself and without leading to an interference of mala fides or lack of good faith is not a justiciable issue in a

Court of law for the necessity of making the order, inasmuch as the ground or grounds on which the order of detention was made is a matter for the subjective satisfaction of the Government or of the detaining authority; (b) that there is nothing in the Act to prevent particulars of the grounds being furnished to the detenu within a reasonable time so that he may have the earliest opportunity of making a representation against the detention order what is reasonable time being dependent on the facts of each case; (c) that failure to furnish grounds with the speedy addition of such particulars as would enable the detenu to make a representation at the earliest opportunity against the detention order can be considered by a Court of law as an invasion of a fundamental right or safeguard guaranteed by the Constitution, viz., being given the earliest opportunity to make a representation; and (d) that no new grounds could be supplied to strengthen or fortify the original order of detention.

It is clear from the ratio laid down in the above decision that mere vagueness of grounds standing by itself and without leading to an inference of mala fides or lack of good faith is not a justiciable issue in a Court of law, and further the grounds on which the order of detention was made is a matter for subjective satisfaction of the Government or of the detaining authority and if the grounds is served within a reasonable time, it is not open to the detenu to contend that he is deprived of making effective representation against the order of detention. In the instant case, the grounds of detention which was served along with the order of detention forms part of the grounds on which the order of detention was made and the subjective satisfaction was arrived at the detaining authority and the order of detention was passed and has been served on the detenu without any lapse of time and as such, it is not open to the petitioner to contend that he was deprived of making effective representation and that it is violative of Article 22(5) of the Constitution of India. In Naresh Chandra Ganguli Vs. The State of West Bengal and Others, , which is also a decision rendered by a Constitutional Bench consisting of five-Judges, it was held (paras 11 and 12) :

This Court, and naturally, the High Courts, have treated the recitals in the orders of detention, with particular reference to the several clauses and sub-clauses of Section 3(1)(a) and (b) of the Act, as stating the object to be

achieved in making the order of detention. The order of detention may also contain recitals of facts upon which it is based. If the order of detention also contains the recitals of facts upon which it is founded, no further question arises, but if it does not contain the recitals of facts which form the basis of the conclusions of fact, justifying the order of detention, then, as soon as may be (now, under S. 7, within a maximum period of five days from the date of detention), the person detained has to be informed of those facts which are the basic facts or the reasons on which the order of detention has been made. S. 3 of the Act requires the authority making an order of detention to state the fact of its satisfaction it is necessary to make the order of detention of a particular person, with a view to preventing him from acting in a manner prejudicial to one or more of the objects contained in clauses and sub-clauses of S. 3(1)(a) and (b) of the Act. S. 7 requires that the person detained should be communicated the grounds on which the order of detention has been made, so as to afford him the earliest opportunity to make a representation against the order, to the appropriate Government. Thus, on a consideration of the provisions of Sections 3 and 7 of the Act, it may be observed that the detenu has to be served with a copy of the order passed by the authority contemplated by sub-sec. (2) of S. 3, containing, firstly, recitals in terms of one or more of the sub-clauses of Clause (a) and (b) of S. 3(1), which we may call, the "preamble", and secondly, the grounds contemplated by S. 7, namely, the conclusions of fact which have led to the passing of the order of detention. Informing the detenu as to why he was being detained. Thus, the order of detention to be served upon the person detained would usually consist of the first two parts, namely, the preamble and the grounds, but it may also consist of the third part, namely, the particulars, if and when they are required or found to be necessary. But it has to be noted that the particulars referred to in sub-secs. (3) and (4) of S. 3, would not be identical with the particulars which we have called the third party of the order.

.....

From what has been said above, it is clear that the High Court was in error in so far as it treated what we have called "the preamble" as the grounds of detention contemplated by S. 7 of the Act. But this error, as will

personally appear, has not affected the legality, propriety or correctness of the order passed by the High Court in the habeas corpus proceedings before it.

The said decision also supports the contention put forward on behalf of the respondents by the learned Additional Public Prosecutor.

8. Let us now consider the decisions relied on by the learned counsel or the petitioners. The decision in Shaik Shikinder v. Govt. of Andhra

Pradesh, (1991) Mad LJ (Cri) 237, was one rendered by a Division Bench of the Andhra Pradesh High Court where it was held :

Held : S. 3(1) of the Act can only be invoked if the detaining authority is satisfied that the detenu answers the description of a Bootlegger or a

Dacoit or Drug Offender or a Goonda or and Immoral Traffic Offender or a Land Grabber or not otherwise. Unfortunately, in the impugned order

of detention, the detenu is not branded as one of the persons covered by S. 3(1) of the Act. In other words, there is no satisfaction of description

of any type of persons covered by S. 3(1) of the Act recorded by the detaining authority. The impugned order of detention is, therefore, per se

bad and liable to be quashed.

The said Bench had not considered the effect of serving the grounds of detention along with the order of detention. Simply it was observed that

since they have taken the view that in the order of detention, the detenu was not branded as one of the persons covered by S. 3(1) of the Act, it is

unnecessary to advert to the grounds of detention served on the detenu, and consequently quashed the order. There was no discussion at all the

said judgment. The entire judgment was delivered in one para wherein the learned Judge quashed the order by stating in one sentence that in the

detention order the detenu is not branded as one of the persons covered under S. 3(1) of the Act and as such the order is vitiated. We do not

agree with the said decision rendered by the Andhra Pradesh High Court without any consideration of the relevant facts and the case laws on this

aspect, especially in view of the ratio laid down by the Apex Court we have already discussed above. The learned counsel for the petitioner cited

the decision in C. Venkataiah v. Commissioner of Police (1990) 1 Crimes 698 rendered by a Division Bench of Andhra Pradesh High Court,

wherein it is stated that ""for passing a detention order under S. 3(1) of A.P.

Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug

Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, there must specifically be the recording of the detaining authority

that the person concerned belongs to any of the categories mentioned in S. 3(1) of the Act." On a careful reading of the said decision, we find that

the ratio laid down in that decision has not been correctly laid down in the face of the decision of the Apex Court quoted even in the said decision.

In paras 4 and 5 of the judgment it is stated as follows :

4. The learned Additional Advocate General, on the other hand, submits that it is not necessary that the order of detention should on the face of it,

show the satisfaction of the detaining authority that the person concerned belongs to any of the categories viz., bootleggers, dacoits, drug

offenders, goondas, immoral traffic offenders and land grabbers etc., but it is sufficient if the satisfaction of the detaining authority was recorded

separately in the ground. S. 2 of the Act defines bootleggers, dacoit, drug-offender, goonda, immoral traffic offender and land grabber etc. In

support of the submission, the learned Additional Advocate-General, referred us to a decision of the Supreme Court reported in District

Magistrate, Nowgong and Another Vs. Sarat Mudoi, that it is not necessary that the satisfaction of the detaining authority that the concerned

person is either a bootlegger or a goonda must be specified in the order of detention to be apparent on the face of it, and it is sufficient if it is

specified in the grounds. The Supreme Court in District Magistrate, Nowgong and Another Vs. Sarat Mudoi, was dealing with the correctness of

the decision of the High Court of Gauhati in a case arising under the National Security Act. The detention order in that case is reproduced

hereunder for proper understanding of the reasoning of the Supreme Court (para 2) :

Whereas I am satisfied from the dossier submitted by Superintendent of Police, Nowgong, that it is necessary to prevent Shri Sarat Mudoi s/o

Shri Reau Modoi, village Senchows, P.S. Nowgong from acting in any manner prejudicial to maintenance of supplies and services essential to the

community, I. S. Kablian, I.A.S., District Magistrate, Nowgong, hereby in exercise of powers conferred under S. 3(2) read with S. 3(3) of

National Security Act, 1980, direct that Shri Sarat Mudoi be detained with

immediate effect until further orders.

5. In the grounds of detention which were supplied to the detenu in that case, six grounds were specified. Before the High Court, the submission of

the detenu which found favour was that the detaining authority did not specify in the order of detention as to which particular supply and/or service

he had in mind while making it; as such the order of detention was vitiated. The Supreme Court disagreed with this contention. The Supreme Court

took the view that it is not necessary that the specification as to the particular supply or service essential to the community affected by the activities

of the detenu for which detention was made should be given in the order of detention, as it would be adequate to enable the detenu to make an

effective representation if the particulars are provided in the grounds of detention. Therefore, non-specification of the required particulars in the

order of detention would not vitiate the order as long as the particulars are provided in the grounds in support of the order of detention.

It is clear from the above decision of the Supreme Court referred to therein, that the non-specification of the class under which the detenu belongs

in the detention order would not vitiate the order as long as the particulars are provided in the ground of detention order. If the ratio laid down in

the Apex Court is accepted, then the decision rendered by the Andhra Pradesh High Court does not seem to be in accordance with the ratio and

as such we are not prepared to subscribe our view to the said ratio laid down by the Andhra Pradesh High Court in the said decision. In *Kishori*

Mohan Bera Vs. The State of West Bengal, only the scope of the passing of the order of detention has been laid down as follows :

Since the power conferred under the Act places the personal liberty of persons in extreme peril against which persons are provided with a limited

right of challenge, such a law has to be strictly construed. It is also necessary to see that the power conferred by such a law to be exercised with

extreme care and scrupulously within the bounds laid down in such a law.

Further, in the abovequoted case, which arose under the National Security Act, it was observed (Para 10) :

It is therefore clear that before the authority invoke its power under S. 3, it must be satisfied and must expressly say in its order that the alleged

activities of the person concerned were such that they endangered or were likely

to endanger either the security of the State or Public order or both. If the activities are of such potentiality or impact so as to affect both of them, the conjunctive "and" and not the disjunctive "or" would be the appropriate word. There is, therefore, considerable force in the argument that the language in which the impugned order is couched demonstrates an element of casualness with which it was made.

This statement of law has been further amplified in *Binod Bihari Mahato Vs. State of Bihar and Others*, wherein Bhagwati, J., said :

If the detaining authority felt that it was necessary to detain the petitioner on the ground that his activities affected or were likely to affect both public order and the security of the State, it would use the conjunctive "and" and not the disjunctive "or" in reciting its satisfaction. Where, however, the disjunctive "or" is used instead of the conjunctive "and", it would mean that the detaining authority was either not certain whether the alleged activities of the petitioner endangered public order or the security of the State, or it did not seriously apply its mind to the question whether such activities fell under one head or the other and merely reproduced mechanically the language of S. 3(1)(a)(ii). When such equivocal language is used and the detenu is not told whether his alleged activities set out in the grounds of detention fell under one head or the other or both, it would be difficult for him to make an adequate representation against the order of detention.

The ratio laid down in the abovequoted case is not applicable to the facts of this case as in the abovequoted case in the order of detention the detaining authority has not expressly stated that the alleged activities of the person concerned were such that they endangered or were likely to endanger either the security of the State or Public order or both, and it has been specifically stated that it is with reference to the security of the State or public order or both. It is only in the circumstances it has been observed that the detaining authority was either not certain whether the alleged activities of the petitioner endangered public order or the security of the State, or it did not seriously apply its mind to the question whether such activities fell under one head or the other and merely reproduced mechanically the language of S. 3(1)(a)(ii). That question does not arise here and the ratio laid down in the above decision is not helpful while deciding the

issue herein. Thus, in view of the ratio laid down in the decisions of the Apex Court and in view of the fact that the detention order and the grounds of detention were served together to the detenu, the failure to mention in the order of detention about the category of persons to which the detenu belongs, it cannot be said that the detenu is deprived of making effective representation against the detention order and on that ground the order is vitiated. Hence we do not find any merit in the said contention.

We also find that the impugned order has been correctly passed strictly in accordance with the procedure and statute and it does not suffer from any infirmity or vires whatsoever so as to warrant any interference in the writ petition. No other point is urged in the writ petition.

9. In the result, the orders of detention are confirmed and both the writ petitions fail and stand dismissed.

10. Petitions dismissed.