

(2001) 08 MAD CK 0017

In the Madras High Court

Case No : Habeas Corpus Petition No. 1028 of 2001

P. Rajamani

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-08-2001

Acts Referred:

Citation : (2002) 1 LW(Cri) 396

Hon'ble Judges : K. Sampath, J; A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : Dalit Tiger C. Ponnusamy, for the Appellant; A. Navaneethakrishnan, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—The Petitioner is questioning the validity of the proceedings order No 15/B.D.F.G.I.S./ 2001 dated

10.2.2001 of the second Respondent viz. the Commissioner of Police Madurai city in and by which the Petitioner's son Rajendra Bose has been detained.

2. One of the grounds raised is that the detention order has to fail since in the said order, the information that as per Section 3(3) of the Tamil

Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum

Grabbers Act 1982 (Tamil Nadu Act 14 of 1982); the detention order shall not remain in force for more than twelve days after making thereof

unless in the meantime it has been approved by the State Government and any representation made to the Detaining Authority by the detenu before

the said approval will be considered.

3. The Supreme Court of State of Maharashtra and Others Vs. Santosh Shankar Acharya, , has clearly ruled that non-communication of the fact

to the detenu that he could make a representation to the Detaining Authority so long as the order of detention has not been approved by the State

Government, would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution of India. This being the settled

legal position as on date there is no quarrel on that between the parties.

4. The question that arises for consideration is whether in the grounds of detention apart from stating that the detenu could make representation to

the Detaining Authority so long as the order of detention has not been approved by the State Government. It is necessary that it must also be

specifically mentioned that the detention order shall not remain in force for more than twelve days and that if any representation is received by the

Detaining Authority before approval, the said representation will be duly considered by the Detaining Authority.

5. The learned Counsel appearing for the Petitioner would make two fold submission viz. that the detention order must also indicate the time within

which under the Act, the State Government has to give the approval, because it would be a very vital information for the detenu to act swiftly.

Secondly, it is also contended that if there is any vagueness in conveying the said information, the detention order has to fail.

6. On behalf of the state, the learned Additional Public Prosecutor contended that in as much as Section 3(3) of the Tamil Nadu Prevention of

Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders and Slum Grabbers Act 1982

clearly mentions the period within which the state Government has to grant approval and hence the non mentioning of the same in the detention

order would not vitiate. According to the learned Counsel, only that legal proposition has been laid down by the Supreme Court in the decision

reported in JT 2000 (8) SC 374 cited (supra). Learned Counsel on behalf of the State further submitted that the well settled legal position is that

ignorance of law is no excuse.

7. Way back in 1953, a constitution Bench of the Supreme Court, while considering Article 22 (5) of the Constitution of India as well as the

Preventive Detention Act 1950 in Dr. Ram Krishan Bhardwaj Vs. The State of

Delhi and Others, observed that preventive detention is a serious invasion of personal liberty and such meager safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the court.

8. In *Anil Vats v. Union of India* (1992 SCC Criminal 48), the Supreme Court was considering the correctness or otherwise of the refusal by the

Advisory Board of the request of the detenu to take assistance of a friend who was readily available, when the matter was enquired by the

Advisory Board. That was a case where in fact, the detenu was a graduate. In that Case the court allowed the petition and set at liberty the detenu,

holding that the Advisory Board should have granted permission, notwithstanding the fact that the detenu was a graduate. In that ruling, the

Supreme Court observed thus.

The position of the detenu in custody has to be appreciated. He may not properly be served in his memory, he may be nervous, incoherent and his

faculties may be benumbed. Assistance of a friend would result in fairness of procedure towards the detenu. We, therefore, find that the procedural

safeguard, as envisaged under Article 22(5) was not satisfied in this case, with the result that continuation of detention of the Petitioner would be

rendered illegal.

9. The Supreme Court of India and this Court in various rulings held that, (a) the relatives of the detenu must be informed about the detention and

the correct place of detention should also be disclosed (b) The detenu should not be taken to a far off place, (c) The grounds of detention and

documents to be given to the detenu in the language known to him. (d) In *H.C.P. No 126 of 2000* the Division Bench of this Court while

considering the communication of information to the relatives of the detenu, ruled that if at the first visit none in the family was available, the

authorities should have made second attempt and that affixing the communication on the door even during the first visit would not be sufficient and

would rather vitiate the detention, (e) As referred to in the opening paragraph of this order the Supreme Court in *State of Maharashtra and Others*

Vs. Santosh Shankar Acharya, ruled that the detenu must be informed of his right to make a representation to the Detaining Authority, who will

consider the same before approval by the state Government.

10. Obviously the courts by laying down the above and many other propositions ensured that the detenu would be able to defend himself

effectively, quickly and at every possible stage.

11. The issue that arises for consideration in this matter has to be considered keeping in mind the above aspects.

12. No one can plead ignorance of law. A person cannot be heard to say that he is not aware that selling of arrack is illegal. Equally, he cannot be

heard to plead ignorance of Tamil Nadu Prohibition Act and Rules framed there under when charged for selling Indian Made Foreign Liquor

without a valid retail license. At the same, time it has to be remembered it would not be possible for a person to know all the procedural aspects of

all the laws of the land fully.

13. We are considering here a case of a detenu when he is taken into custody and if such a detenu desires to verify the legal position, it is not as if

the various enactments are readily made available to him by the police authorities or by the jail authorities. There is no Legal Aid Clinic in all the

prisons. Even some of the Legal Aid Clinics that are available in some prisons do not work round the clock. Needless to mention that an illegal

detention cannot be tolerated irrespective of duration, be it a minute or an hour or a day of course, a contention is raised that in as much as Section

3 of the relevant Act mentions the said period, it is not necessary to mention the same in the detention order. It is true that a period of twelve days

is mentioned in the said provision in the Act within which the State Government has to give approval. But one has to remember that the detenu

would not be having the various Acts in his hands to look into the same and know the procedural formalities. It may also be mentioned that

invariably many of the prisoners are illiterate and further considerable numbers are womenfolk. Or in other words, what this Court is inclined to

hold is that even though the detenu cannot be heard to plead ignorance of law, the State is duty-bound to inform the detenu, who is placed in a

disadvantageous position of the procedural requirement which is a very vital and useful information to the detenu to enjoy the right declared by the

Supreme Court in the Santhosh Shankar Acharya's case without losing any time and this would not place any premium on ignorance of law and in

the instant case, the procedural requirement is that the State Government has to

approve the detention order within twelve days, after making thereof. This vital information would enable the detenu to give a representation immediately, if he so desires, so that the same can be considered by the Detaining Authority before approval by the State Government.

It is made clear that we are not holding that each and every" procedural details/ aspects in the Act should also be mentioned in the detention order.

14. In this context, this Court is inclined to refer to a ruling of the Constitution Bench of the Supreme Court in *State of Punjab Vs. Baldev Singh*,

etc. etc., . In that case the Supreme Court was considering Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The issue

that is considered is how the search and seizure have to be conducted. Section 50 of the said Act deals with the conditions under which search of

persons shall be conducted. The relevant provision reads thus, when any officer duly authorized u/s 42 is about to search any person under the

provisions of Section 41 Section 42 or Section 43 he shall, if such person so requires, take such person without unnecessary delay to the nearest

Gazette Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

Emphasis supplied.

In that case Supreme Court ruled that notwithstanding the clear provision in the Act the officer who conducts the search u/s 50 must inform the

suspect that he has a right to search before a Gazetted Officer or a Magistrate.

Hence if it is to be blindly taken that everything found in all the acts including the procedural aspects a citizen should be deemed to have a

knowledge then the Supreme Court would not have ruled thus. We deem it necessary to extract the relevant portion from the judgment which

reads thus

conducting a search u/s 50 without intimating to the suspect that he has a right to be searched before a gazetted officer or a magistrate would be

violative of the reasonable fair and just procedure and the safeguard contained in Section 50 would be rendered illusory otiose and meaningless.

Procedure based on systematic and unconscionable violation of law by the officials responsible for the enforcement of law cannot be considered to

be fair just or reasonable procedure. We are not persuaded to agree that reading into Section 50 the existence of a duty on the part of the

empowered officer, to intimate to the suspect about the existence of his right to be searched in presence of gazetted officer or a Magistrate, if he so requires would place any premium on ignorance of law. The argument loses sight of a clear distinction between ignorance of the law and ignorance of the right to a "reasonable, fair and just procedure".

15. There is yet another aspect of the matter this Court is inclined to point out. This Court examined about ten cases and we find in the grounds of detention that detenus right to send representation to the detaining Authority has been mentioned and the wordings employed are different. We hereunder extract the three different type of cases ""CASE A: The detenu is informed that he has a right to make representation in writing to the Detaining authority against the detention order till such time the order of detention is approved by the State Government. The detenu is informed that this detention order shall not remain in force for more than 12 days after making thereof unless in the meantime it has been approved by the State Government H.C.P. No. 969/2001 CASE B: The detenu is also informed that he has a right to make representation in writing against the said detention order to the detaining authority and if any such representation is received by the detaining authority before the approval of the said representation is duly considered by the detaining authority CASE C: The detenu has a right to make a representation till such time 12 days the order has been approved by the State Government H.C.P. NO 1089/2001).

16. From a reading of the above this Court is inclined to point out two aspects of the matter. While some of the detenus are informed about their rights in a clear and unambiguous manner (i.e.) CASE A referred supra in others either not conveyed at all or conveyed but in an unclear and ambiguous manner. There can be no justification in the State contending that under the Act or as per the rulings of the Supreme Court referred supra they are not obliged to inform about 12 days period and hence detention would not become illegal. Or in other words suppose if there are 100 detenus and out of which for 10 detenus the authorities clarified the position and furnished some vital and useful information it cannot be heard to say that failure by the same Detaining Authorities to clarify similarly for others would not in any way invalidate the detention orders. To put it differently when some detenus are furnished with some useful and vital

information the authority cannot withhold the same for the other detenus.

The contention that detaining authorities are different cannot be accepted.

In the illustrative CASE B the Detaining Authority has not furnished the procedural information.

Coming to the detention order illustrated as CASE C we find the same is not properly worded and lacks in clarity in conveying the information. Of

course if the detenu has been served with the detention order in a language known to him say for instance Tamil and if that order clearly conveys

the detention order would not fail for vagueness.

17. In the result we hold.

(a) The detention order must clearly state that the same shall not remain in force for more than twelve days after making thereof unless in the

meantime it has been approved by the State Government and that further the detenu has a right to make representation in writing against the

detention order to the Detaining Authority and if any such representation is received by the Detaining Authority before the approval, the said

representation will be duly considered by the Detaining Authority, since the above is a vital and useful information and only then the detenu will

have the complete benefit of enjoying the right declared by the Supreme Court in Santhosh Shankaracharya's case without losing time,

(b) If the above has not been conveyed in clear and unambiguous terms in the detention order then again the same would stand vitiated.

18. As far as the present case is concerned in the detention order the Detaining Authority has not conveyed the required information to the detenu

as indicated above. Hence, the detention order is vitiated.

19. The Habeas Corpus Petition is allowed and the detenu is ordered to be set at liberty forthwith unless his detention is required in connection

with some other case.