

(1992) 07 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 3028 of 1992

Panjali

APPELLANT

Vs

District Magistrate and Collector, North Arcot Ambedkar Dist.
Vellore and two Others

RESPONDENT

Date of Decision : 28-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 07 MAD CK 0041

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

Bench : Division Bench

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

Final Decision : Allowed

Judgement

K.M. Natarajan, J.—This writ petition is filed by one Mrs. Panjali, wife of the detenu Manickam, under Article 226 of the Constitution of India seeking for the issuance of a Writ of Habeas Corpus quashing the order of detention dated 24-1-1992 passed against her husband Manickam and set him at liberty. The detenu 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. The impugned order of detention was passed by the District Magistrate and Collector, North Arcot Ambedkar District, Vellore, the first respondent herein, in exercise of the powers conferred in Section 3(1) 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) with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The details of the ground case which led to the passing of the impugned order are set out in the grounds of detention which was duly served on the detenu and hence we do not propose to reiterate the same here especially in view of the limited plea taken by

the learned counsel for the petitioner.

2. Though the learned counsel for the petitioner, Mr. A. Ramesh, challenged the impugned on many grounds mentioned in the affidavit of the petitioner, he confined his argument on ground No.G, which reads as follows:-

(G) I humbly submit the detaining authority has served on my husband, the detenu herein, the documents relied on by him to come to the conclusion to detain my husband. Out of which, documents at page Nos. 20, 21, 22, 47, 48, 49, 51 and 52 are totally illegible. In spite of repeated request to the prison authorities to furnish to the detenu the legible copies they have not furnished. In this connection, I would like to submit that the prison Authority has affixed the seal stating that the documents have been read over and explained to the detenu by the Prison Authority could never had taken place. It is an empty formality which has been followed without scrupulously following the procedure. I humbly submit that pages in the grounds of detention served on the detenu, as referred to above, are totally illegible. In the absence of supply of legible copies, with the grounds of detention, the service of the grounds and the order is non-compliance of service. In the absence of supply of legible copies, the detenu has lost the opportunity of making effective representation and on this ground the detention order has to be quashed. Judgment relied upon *Bharat Raj v. Union of India* - reported in 1991 Vol. II Crimes - Page 498.

In the counter-affidavit filled by the first respondent, the detaining authority, it is averred in para 8 as follows:

8. As regards the averments in ground (G) of paragraph 6 of the affidavit. I submit that all the documents furnished to the detenu were legible and readable the contents whereof have been read over and explained by the prison authorities. Hence, the detenu is not in any way prevented from making any representation as alleged. The contention to the contra is therefore untenable.

3. Though it is stated in the counter-affidavit that the documents furnished to the detenu were readable and legible, the learned counsel for the petitioner submits that those averments are not correct, and to substantiate his contentions, the learned counsel produced before us the copies of documents which were furnished to the detenu along with the grounds of detention. We have gone through the said documents. Document No. 20 at pages 20 and 21 relates to Form 95 in respect of the adverse case; document No. 47 at pages 47 and 48 relate to N.Form and document No. 51 at pages 51 and 52 relate to Form 95 in respect of the ground case. We find that those documents are not legible and readable. In this connection, the learned counsel for the petitioner drew our attention to the decision in *Dharmista Bhagat v. State of Kamalaka* 1990 S.C.C. (CrI) 39 wherein the apex court held as follows:

5. The learned counsel appearing on behalf of respondent I, Union of India has contended that even though legible copy of panchanama referred to in the list of documents mentioned in the grounds of detention has not been supplied to the

detenu yet the fact that five gold biscuits of foreign marking were recovered from the possession of the detenu was sufficient for subjective satisfaction of the detaining authority in making the said order of detention. So the detention order cannot be termed as illegal and bad for non- supply of legible/typed copy of the said document i.e. panchnama dated February 12, 1988. The panchanama dated February 12, 1988 which had been referred to in the list of documents referred to in the grounds of detention and a copy of which had been given to the detenu along with the grounds of detention, is not at all legible as is evident from the copy served on the detenu. It is also not in dispute that on receiving the documents along with the grounds of detention the detenu had made a representation to respondent 1 slating that some of the documents including the panchanama which had been supplied to him are illegible and as such a requisite was made for giving typed copies of those documents to enable the detenu to make an effective representation against the same. The detaining authority on receipt of the said representation sent a reply denying that the copies of those documents were illegible and refusing to supply typed copies of the same. It is clearly provided in sub-article (5) of Article 22 of the Constitution of India that:

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making representation against the order.

Therefore, it is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents which had been considered informing the subjective satisfaction by the detaining authority before making the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority. Therefore, the nonsupply of legible copy of this vital document, i.e., Panchnama, dated February 12, 1988 in spite of the request made by the detenu to supply the same renders the order of detention illegal and bad. This Court in *Mehrunissa Vs. State of Maharashtra*, has observed that: (SCC p.71):

The detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents. The failure of the detaining authority to supply copies of such documents vitiated the detention, as has been held by this court in the two cases cited by counsel. The detenu is, therefore, entitled to be released. He is accordingly directed to be released forthwith.

Relying on the above decision of the Supreme Court, a learned single Judge of the Delhi High Court in *Bhamgat Raj v. Union of India & Ors.* 1991(2) Crimes 498 has held as follows: (para 16).

16. It is the admitted case of the respondents that the documents were

necessary to be considered by the detaining authority and that was the reason that all these documents were relied upon for coming to a subjective satisfaction by the detaining authority. The supply of illegible copies *pari pasu* with the grounds of detention cannot be said to be compliance with regard to the supply of documents and in the eyes of law it would be presumed that the documents which are illegible have in fact not been supplied. Thus there is a default on the part of the detaining authority in supplying the relied upon documents and thus the petitioner has been deprived of his right of making an effective representation against the order of detention. On this ground that order of detention cannot be sustained. I find support for this view from the case *Bhupinder Singh v. Union of India & others* (1987 S.C.C. (CrI.) 528). The aforesaid case has been followed by the Supreme Court in Criminal Appeal No. 258/89 *Smt. Dharmista Bhagat v. State of Karnataka & Anr.* decided on 7-4-1989. These judgments have been followed by various courts in India including this Court in numerous cases and reference can be made in this regard to the case *Vijay Bhawsingh v. U.O.I. & Ors.* Criminal Writ N. 240/89 decided by a Division Bench of this Court on 15-9-1989. *Sharaf v. V.O.I. & Ors.* Criminal Writ No. 75-76/90 decided on 23-7-1990.

Applying the ratio laid down in the above Cases to the facts of this case. We find that even according to the learned Additional Public Prosecutor, the documents in question are vital documents and the detaining authority considered and relied on them while arriving at the subjective satisfaction. We find that those documents supplied to the detenu are not legible and readable. Hence it can be held that the detenu was not able to make an effective representation against the impugned order. The supply of illegible and unreadable documents along with the grounds of detention would amount to non-supply of documents as well as held in the above decisions. We have no hesitation in holding that by the supply of illegible and unreadable material documents, the detenu was deprived of taking effective representation and as such, the impugned order is violative of Article 22(5) of the Constitution of India and hence it is vitiated.

4. In the result, the writ petition is allowed, the impugned order is quashed and the detenu is directed to be set at liberty forthwith unless he is required in connection with any other cause.