

(1986) 11 DEL CK 0059

In the Delhi High Court

Case No : Criminal Writ Petition Appeal No. 46 of 1986

Paramjit Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 07-11-1986

Acts Referred:

Citation : (1988) ILR Delhi 417

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : Harjinder Singh, B.P.S. Mangat, Naveen Malhotra, R.K. Anand and Bharati Anand, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) The petitioner Paramjit Singh was detained in Central Jail, Tihar, New Delhi, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) under the order of detention dated 18th November, 1985 passed by Shri K. K. Dwivedi, Joint Secretary to the Government of India, specially empowered in that behalf.

(2) The petitioner has filed this writ petition for the quashing of the detention order passed against him and for a direction by way of writ or otherwise for his immediate release from detention. The order of detention was passed by the detaining authority with a view to preventing him from dealing in smuggled goods otherwise than by concealing or keeping smuggled goods and engaging in transporting smuggled goods. It would be unnecessary to set out the petitioner's alleged activities on the basis of which this detention order was passed.

(3) The main ground urged by Mr. Harjinder Singh Advocate learned counsel for the petitioner is that the petitioner knew much less of English language for which reason he had been supplied copies of the order of detention, grounds of detention and other various documents in Gurmukhi script together with the same in English, and that the language which he knew very well was only Punjabi

in Gurmukhi script. He has pointed out that there was nothing wrong with the English versions of any of these but wrong was there in respect of the papers supplied to him in Gurmukhi script inasmuch as the order of retention in Gurmukhi script supplied to him did not pertain to him but to one Mohd. Akram son of M. Haji Sultan whereas the grounds of detention in Gurmukhi script supplied to him did not pertain to him but to a co-detenu Ganga Ram Kapoor. His contention was that on account of the aforesaid infirmities he was prejudiced in the exercise of his constitutional right, as guaranteed under Cause (5) of Article 22 of the Constitution of India, in making a purposeful and an effective representation to the detaining authority. This constitutional provision reads as follows :-

"(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 a representation against the order."

(4) He has further submitted that under the law he is entitled to make representations first to the detaining authority and then to the Advisory Board and lastly to the Central Government and that it was his right to make an effective representation at the earliest to the detaining authority which had been hampered and prejudiced for the aforesaid defaults committed by the detaining authorities.

(5) On the other hand, the aforesaid infirmities pointed out by Mr. Harjinder Singh have been resisted as factually incorrect as also by further pointing out that the petitioner knew English language quite well and that his conduct showed that his knowledge of English was not inadequate so as to hamper him in his representation, it was also contended that the aforesaid infirmities or the lack of adequate knowledge of English were not pointed out by the petitioner in his writ petition but were stated only subsequently during the pendency of the writ petition in the affidavit deposed to by Girdhara Singh, father-in-law of the petitioner, and had nowhere been pointed out earlier in any document or communication to the detaining authority or any other concerned authority including the representation made by him to the Central Advisory Board and for all these reasons it was urged that the petitioner was simply feigning ignorance or lack of adequate knowledge of the English language. It was also contended on behalf of the respondents that when these infirmities did not find mention as grounds of attack on the detention order, and found mention only subsequently in the afore-said affidavit of Girdhara Singh, father-in-law of the petitioner, the same would not constitute the grounds of attack on the detention order as the affidavit was beyond the pleadings.

(6) In such like writ matters the law of pleadings as enunciated in the CPC need not be scrupulously followed and the illegality can be pointed out even otherwise by way of an affidavit or even orally, especially when the personal liberty of a

person has been snatched not under the ordinary law but under the extraordinary law of preventive detention and the burden of showing that the detention is in accordance with the procedure established by law remains always on the detaining authority because Article 21 of the Constitution provides that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. On this point it would be opposite to refer to Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, , which has held as follows :-

"In case of an application for a writ of habeas corpus, the practice evolved by Supreme Court is not to follow strict rules of pleading nor place undue emphasis on the question as to on whom the burden of proof lies. Even a postcard written by a detenu from jail has been sufficient to activate the Court into examining the legality of detention. The Supreme Court has consistently shown great anxiety for personal liberty and refused to throw out a petition merely on the ground that it does not disclose a prima facie case invalidating the order of detention. Whenever a petition for a writ of habeas corpus has come up before the Supreme Court it has almost invariably issued a rule calling upon the detaining authority to justify the detention. Once the rule is issued it is the bounden duty of Court to satisfy itself that all the safeguards by the law have been scrupulously observed and the citizen is not deprived of his personal liberty otherwise than in accordance with law. Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a prima facie case in support of those grounds before a rule is issued or to hold that the detaining authority should not be liable to do anything more than just meet the specific grounds of challenge put forward by the petitioner in the petition. The burden, of showing that the detention is in accordance with the procedure established by law has always been placed by the Court on the detaining authority. Because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law."

(7) So, there can be no difficulty in taking note of the afore-said infirmities pointed out in the affidavit of Girdhara Singh, father-in-law of the petitioner, especially when the respondents were afforded the opportunity of filing a counter-affidavit against the same.

(8) There is a long catena of Supreme Court authorities and also held in Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, that the Constitution requires that the grounds must be communicated and, Therefore, it must follow an imperative that the grounds must be communicated in a language understood to the person concerned so that he can make effective representation. In that very part it is further observed by the Supreme Court that the claim of the detenu that he does not know anything

except a particular language, is merely the ipse dixit of the detenu and is not the last word and the Court is not denuded of its powers to examine the truth. As already pointed out above, the learned c for the respondents has relied upon the conduct of the petitioner in not mentioning that he does not know English well and knows only Gurmukhi very well in his writ petition and the representation. made by him to the Advisory Board against the detention order. On the other hand, Mr. Herjinder Singh appearing on behalf of the petitioner has pointed out certain facts to show that Gurmukhi is the only language known well to the petitioner as against English and those facts are that the earliest statement of the petitioner recorded u/s 108 of the Customs Act, 1962 by the customs authorities was in Gurmukhi script and a letter dated 31st January, 1986 (English translation Annexure "K") written by him to the Chairman, Advisory Board was also in Gurmukhi and that all the documents supplied to him by the detaining authority including the grounds of detention and the order of detention as also the representation (Copy Annexur "J") to the Chairman, Central Advisory Board, were all signed by him in Gurmukhi script. He has further pointed out that the representation (Copy Annexure "J") already referred to above had been drafted in English by counsel Shri Harbans Singh and further that the writ petition was drafted by the petitioner's counsel Shri Herjinder Singh Advocate and did not bear the signatures of the petitioner, and for these reasons he has submitted that the petitioner could read and write properly only in Gurmukhi script and not in English which language he admittedly knows only a little bit as he had studied only up to 9th Class in Gurmukhi medium and where English was taught only from 6th Class.

(9) Bearing in mind the aforesaid contentions of the learned counsel for both the parties and after perusal of the departmental file which had been brought in Court by the officer of the department concerned and wherefrom the aforesaid facts pointed out by the learned counsel for the petitioner regarding Gurmukhi writings and signatures by the petitioner, are borne out, I find the preponderance of probabilities in favor of the petitioner on this point and in this inference I feel fortified by the fact that even the department felt so satisfied that it also supplied to the petitioner Gurmukhi translation of all the documents including the order of detention and the ground of detention, and the facts of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, were different on the basis of which ^? Supreme Court veered round to the view" that the detenu therein was merely feigning ignorance of English. Any how, it was made clear in para 64 of that very authority that whether grounds were communicated or not depended noon the facts and circumstances of each case and in the earlier para No. 62 it was observed that the Constitution required that the grounds must be communicated and, Therefore, it must follow as an imperative that the grounds must be communicated in a language understood by the person concerned so that he can make effective representation.

(10) The contention on behalf of the petitioner that Gurmukhi copy of the order of detention supplied to the petitioner pertained not to him but to one Mohd.

Akram son of M. Haji Sultan raised in the affidavit of Shri Girdhara Singh, father-in-law of the petitioner, has been denied in the counter-affidavit deposed to by Shri S. K. Chowdhry, Under Secretary, Ministry of Finance, Department of Revenue, Government of India, on behalf of the respondents. The other contention on behalf of the petitioner that the Gurmukhi copy of the grounds of detention supplied to him pertained not to him but to another co-detenu Ganga Ram Kapoor and raised in the affidavit of Girdhara Singh has also been controverted in the aforesaid counter-affidavit of S. K. Chowdhry wherein it is stated that initially the name of Ganga Ram Kapoor was finding mention there in the Gurmukhi copy of the grounds of detention but that name stood scored off when that copy was supplied to the petitioner. This copy does not bear the name - of the petitioner. It was pointed out by Mr. Anand learned counsel for the petitioner that the grounds of detention pertaining to Ganga Ram Kapoor and those pertaining to the petitioner are identical and thus there could be no prejudice to the petitioner thereby and this contention looks true.

(11) It was then contended by Mr. Harjinder Singh for the petitioner, and also asserted in para 20 of the writ petition and further specified in para 9 of the affidavit of Girdhara Singh which was filed as per direction of this Court for the purpose of specification and precision that there was variance in the grounds of detention supplied to the petitioner in English and the Gurmukhi copy thereof. There are a large number of instances specified in para No. 9 of the affidavit deposed to by Girdhara Singh. These discrepancies occurring in the two sets appear to be sufficient to hamper and prejudice the right of the petitioner in the making of an effective and purposeful representation to the detaining authority at the earliest and this point vitiates the order of detention passed against the petitioner.

(12) No other point was urged at the Bar by the learned counsel for the petitioner and in view of the above discussion, as the detention order stands vitiated the same is quashed and it is directed that the petitioner be set at liberty without any further loss of time.