
(1976) 08 DEL CK 0011

In the Delhi High Court

Case No : Criminal Writ Appeal No's. 229 of 1975 and 25, 99 and 123 of 1976

P.N. Lekhi etc.

APPELLANT

Vs

Administrator, Union Territory of Delhi etc.

RESPONDENT

Date of Decision : 20-08-1976

Acts Referred:

Citation : (1977) CriLJ 906 : (1977) ILR Delhi 6

Hon'ble Judges : Prithvi Raj, J;Prakash Narain, J

Bench : Division Bench

Advocate : D. Latifi, Mohd.Muslim, V.P. Raman, B.D. Bal, B.N. Lokur, Harish Chandra, R.N. Nagaratnam and V. Rao, for the Appellant;

Judgement

Prithvi Raj, J.

(1) Since common questions of law are involved in these petitions it would be proper to dispose them of by a single judgment.

(2) The case of Shri P. N. Lekhi, who is detained u/s 3 of the Maintenance of Internal Security Act, 1971 (herein called "the Act"), mainly, is that the Administrator of Union Territory of Delhi has failed to perform the statutory duty imposed upon him by section 5 of the Act in that no general or special order specifying conditions, including conditions as to the maintenance, discipline and punishment for breaches of discipline had been made by him; that in the absence of any such order the respondents have no power to keep the petitioner in detention and impose conditions upon him as set out in paragraphs 4 to 7 of the petition. Further, section 5 of the Act imposes a duty on the appropriate Government to provide by general or special order maintenance to the detenu to ensure that his family does not starve and rendered impecunious. Accordingly, a declaration is sought to the effect that the Administrator of the Union Territory of Delhi is under a statutory duty to make general/special order u/s 5 of the Act; that in not making a general/special order the Administrator of Union Territory of Delhi has failed to perform his duty enjoined by law and further an order,

direction or writ in the nature of mandamus is sought against the said Administrator directing him to make special or general order in terms of section 5 of the Act. A similar declaration against the Superintendent, Central Jail, Tihar, is sought to the effect that he has acted illegally in failing to provide maintenance to the petitioner according to law and that petitioner's continued detention is illegal and unwarranted. An order, direction or writ in the nature of mandamus is also sought against the respondents directing them to provide the petitioner with maintenance commensurate with his status and standard of living and also for his family members, dependent upon him.

(3) MOHD. Muslim, petitioner in Cr. W. No. 229 of 1975 is detained under the Act since 26/06/1975, and is in detention in Central Jail, Ambala. According to the petitioner he was employed as the Editor of the Urdu daily Dawat, Delhi, and was getting a salary of Rs. 500 per month with other facilities of house rent etc.; that because of his detention he is not getting anything from his employers; that he has no other source of income whatsoever of any kind to meet the bare minimum living expenses of his family as a result whereof his family is under great hardship occasioned by his forced detention. He accordingly prays that the respondents be directed to pay to the petitioner his salary and other allowances while he is in detention; that the respondents be directed to make good the loss suffered by him so far by his detention and that the respondents be directed to produce the rules, if any, framed under the Act and if the said rules provide for less ex gratia amount than the petitioner's salary with allowances, then the same be declared as ultra vires.

(4) A. C. Shubh petitioner in Cr. W. No. 123 of 1976 is detained u/s 3 of the Act issued by the Additional District Magistrate (East), Delhi, and is at present in detention in Central Jail Tihar. His case is that the respondents are liable to maintain him under section 5 of the Act including the dependant members of his family, in the absence of which the detention of the petitioner shall become punitive. The petitioner further contends that the prohibition imposed upon him by the Superintendent of Central Jail, Tihar, not to move out of the ward in which the petitioner is detained, and denying communication with other co-prisoners is in excess of his powers and is punitive amounting to denial of right of movement to him. It is further contended that the Administrator was required to frame rules u/s 5 of the Act to provide maintenance to the detenus and their families and his failure to do so amounts to denying/delaying maintenance to the petitioner and the members of his family. The petitioner accordingly prays that an appropriate writ, order or direction may be issued to the respondents to sanction adequate and appropriate amount of compensation not less than Rs. 1200 per month, besides providing for his maintenance in jail during his detention and to frame rules to implement the duty to maintain the detenu including dependent members of his family.

(5) Kidar Nath Sachdeva petitioner in criminal writ No. 99 of 1976 was detained on 26/06/1975, under the Act and is at present lodged in Central Jail, Ambala.

His grievance is that the respondents are allowing him to spend only Rs. 20 per month but keeping in view the rising prices it is not possible for the petitioner to even buy food at his own expense to supplement the food given by the jail authorities which he alleges is of very poor quality. He further contends that his wife and children have to come from Delhi to Ambala for weekly interviews with him on which heavy expenditure is incurred ; that the petitioner's wife has to spend many hours for getting permission for a weekly interview and that a lot of money is spent in the journey. All these instructions, the petitioner contends, has resulted in converting the preventive detention into punitive detention. The petitioner accordingly prays that the respondents be directed to allow the petitioner applicant to spend Rs. 200 per month during his detention ; to transfer the petitioner to Delhi Central Jail or to make transport arrangement for the petitioner's family members and relatives every week for interview with the petitioner; to allow the petitioner to move about within the jail premises for a stroll daily for a specified period ; to give the petitioner proper medical facilities of his choice; to direct the respondents to fix the duration of interviews of at least two hours without the presence of C.I.D. persons and to make liberal arrangements for interview so that petitioner's relatives may be allowed immediate interviews without waiting long.

(6) The respondents in their reply to the writ petition No. 25 of 1976 contend that there is no obligation on the part of the appropriate Government to provide for maintenance allowance to, or otherwise look after, the dependents of the detenus detained under the Act; that the Administrator has not failed to perform the statutory duty imposed upon him u/s 5 of the Act in that the Administrator of the Union Territory of Delhi has issued notification No. F. 5(42)/74-C/HG, dated 8/05/1974; that the said notification is general one specifying conditions including conditions of maintenance, discipline and punishment for breaches of discipline etc.; that by virtue of the above-said notification persons detained under the Act are treated as under-trial prisoners for the purposes of providing maintenance etc. It is further submitted that the obligation under the Act is only to provide for the maintenance of a person detained under the Act and not any one else. The respondents also contend that the petitioners have no locus standi to move the petitions nor have they any legal right to approach this Court in its extra ordinary jurisdiction for the relief sought in the petition.

(7) In reply to the writ petition filed by Mohd. Muslim it is averred that the Delhi Administration is actively considering the question of grant of subsisting allowance to the detenus under the Act and as soon as the payment of such allowance is provided for the detenus under the Act, the petitioner would be given benefit thereof.

(8) It may bear mention here that no reply was filed on behalf of the respondents in the criminal writs filed by Shri A. C. Shubh and Shri K. N. Sachdeva. The said petitions were argued on the basis of the replies filed by the respondents in the two writ petitions filed by Shri P. N. Lekhi and Shri Mohd. Muslim.

(9) Shri Daniel Latifi, Senior Advocate, appeared and argued THE petition on behalf of Mohd. Muslim while Sarvashri P. N. Lekhi and A. C. Shubh petitioners addressed arguments in person. Shri K. N. Sachdeva petitioner adopted the arguments advanced by Shri P. N. Lekhi petitioner in petition, Cr. W. No. 25 of 1976.

(10) Relevant provision of section 5 of the Act which falls for consideration in these petitions is as follows:-

"EVERY person in respect of whom a detention order has been made shall be liable :- (a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify;

(11) The petitioners' case as urged is as follows : That a perusal of section 5 of the Act unmistakably reveals that the liability of a detenu to be detained casts a corresponding duty on the appropriate Government to provide for the maintenance of the detenu and the members of his family dependent on him because of his forced detention, the dependent members of his family are deprived of their maintenance. In other words, the power of the appropriate government to detain a person is coupled with the duty cast on it to provide maintenance for the detenu and the members of the family dependent on him. Accordingly under clause (a) of section 5 the appropriate Government is under an obligation to frame rules providing for the maintenance of the detenu and members of his family dependent on him. For want of such an order, the detention is untenable and becomes illegal.

(12) Further it was argued that from a combined reading of sections 3, 5 and 6, it becomes abundantly clear that section 6 is a key to the operation of sections 3 and 5. Section 6 does not envisage that detention would be invalid if no maintenance was provided. The detention is by way of preventive measure and not intended to be punitive in its nature. A detenu has to be kept in a reasonable state of comfort according to his status in life, commensurate with his earnings. It was urged, the authority of Sampat Prakash Vs. State of Jammu and Kashmir, , a detenu is not a convict, the power to detain is not a power to punish. The power to detain is primarily intended to be exercised in cases when the larger interest of the State demand that restrictions shall be placed upon the liberty of a citizen curbing his future activities. The restrictions so placed, must be minimal. 14 HCD/76-2

(13) The failure of the appropriate Government it was also urged in not framing rules providing for the maintenance of a detenu and the dependent members of his family, ignores the mandate contained in section 5 of the Act making the detention punitive. That being so a detenu is under no liability to be detained because of the dismal failure of the appropriate Government to frame rules. That no rules in this respect exist is borne out from the admission of Shri Arjan

DassSapra, Deputy Secretary (Home), Delhi Administration, in his replyaffidavit in Criminal Writ No. 229 of 1975, that "the Delhi Administration is considering the question of permitting the grant of subsistenceallowance to the detenus detained under the MISA" and that the ruleshave not yet been framed and published.

(14) The notification No. F. 5(42)/74-C/HG dated 8/05/1974.relied upon by the respondents it was submitted falls short of what isrequired to be provided by way of maintenance of a detenu apart from the fact that it is totally silent in respect of the maintenance of thedependent members of the detenu. The said notification seeks to deprivea detenu of the ordinary amenities of life and thus assume punitivenature. The conditions of detention of a person preventively detainedare not privileges conferred on the detenu but are conditions subject towhich alone his liberty could be restricted.

(15) "MAINTENANCE", goes the argument, cannot be mere food, raimentand shelter but has to be real maintenance, not a bare or starvingmaintenance. Not allowing real maintenance in consonancewith the minimal standard of decent living in a civilizedsociety would in effect amount to forcing a detenu to livein sub-standard conditions which is not the object sought to be attainedby the Act. Preventive detention is qualitatively different from the punitive, detention, unless there was a specific provision in the law underwhich a person was detained imposing a particular restriction on adetenu from doing what any member of the public can do. Further,that the word "maintenance" in its true connotation means providingof family allowance, also was borne out on two grounds, viz., (i) logical and functional interpretation of the said term and (ii) on its truelegal interpretation.

(16) A detenu being under a legal duty to maintain his wife anddependent members of his family because of his detention is deprivedfrom discharging his duty of maintaining his family. It is, Therefore, incumbent on the appropriate Government to provide maintenance to themembers of the detenus" family. Such an obligation, it was submitted,is a natural consequence of the detention order and would be in consonance with the provisions of the Act.

(17) It was then submitted that the Parliament was fully aware ofthe "functional" use of the expression ""Maintenance" as understoodin law, the use of the said expression in the Act was intentional and in contradiction to the word ""maintain". Accordingly restricted meaningcould not be attributed to the term ""maintenance" in merely providing" food, raiment and shelter for the person of the detenu.

(18) The expression "maintenance" had been interpreted by theCourts in this country in a series of cases, and the Parliament, it wasurged, in intentionally using the said expression in the Act it may bepresumed that the Parliament intended to attach the same meaning tothe expression "maintenance" as given by the courts, the ratio of therule of interpretation being that the words of legal

import occurring IN a statute should be construed in their legal sense in that those words have, in law acquired a definite and precise sense. Accordingly, it was submitted. Parliament in using the expression "maintenance" in the Act must be taken to have intended that the said expression be understood in the sense the said expression was interpreted by the Courts. In other words, it was contended, the Parliament in using the expression "maintenance" in section 5 of the Act accepted the meaning given to the said expression by the courts to it. This argument was sought to be reinforced from the decision of the Supreme Court in case I. P. Vajravelu Mudaliar and- (2) P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, , and case The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., .

(19) The above-cited cases have no bearing on the question under consideration and were decided on their own facts. The Supreme Court in I. P. Vairavelu Mudaliar's case (supra), was considering the question of constitutional validity of the Land Acquisition (Madras .Amendment) Act, 1961. In the course of arguments the expression "compensation" used in Article 31(2) fell for consideration. The amended Article 31(2) by virtue of the Fourth Amendment Act, 1955, envisaged that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given and no such law shall be called in question in any Court on the ground that the compensation provided by law is not adequate. It was in that context that it was observed at page 1023 that it may-

"BE taken as settled law that under Article 31(2) of the Constitution before the Constitution (Fourth Amendment) Act, 1955, a person whose land was acquired was entitled to compensation, i.e., a "just equivalent" of the land of which he was deprived".

and that scrutiny of the amended article disclosed that the Parliament in using the same expression as were found in Article 31 before the amendment is a clear indication that it accepted the meaning of the expression "compensation" as given by the Court to that expression.

(20) In Ganon Dunkerley's case (supra), the question involved was whether the respondents were liable to pay sales-tax on the value of the materials used by them in the execution of their work contracts as also on the price of the food grains supplied by them to their workmen engaged in the construction work. The Court in that case was called upon "to interpret the words "sale of goods" used in Entry 48 List II Schedule VII. The Court taking note of the fact that both under the common law and statute law relating to sale of goods in England and India to constitute a transaction of sale there should be an agreement express or implied relating to goods to be completed by passing of title in those goods, held that in a building contract it was impossible to maintain that there is a sale of

materials as understood in law because in such an agreement there was neither a contract to sell the materials used in the construction nor did the property pass therein as moveables. It was in that view of the matter that it was held that "in interpreting an expression used in a legal sense", the Court has "only to ascertain the precise connotation which it possesses in law". Accordingly, the Court observed "The ratio of the rule of interpretation that words of legal import occurring in a statute should be construed in their legal sense is that those words have, in law, acquired a definite and precise sense, and that, accordingly the legislature must be taken to have intended that they should be understood in that sense".

(21) The cardinal rule of interpretation is that "words should be read in their ordinary, natural and grammatical meaning". Can it, therefore, be said that the wording of section 5(1) of the Act necessarily posits that the true interpretation to be put on the word "maintenance" is what it means in other Acts. It cannot be so taking in consideration the object and scope of the Act.

(22) A person on detention loses his freedom and being no longer a free man he has to live in detention on conditions as are prescribed. A perusal of the impugned order issued in pursuance of section 5(1) (a) of the Act without doubt shows that the matter regarding specifying "such conditions" by special or general order for the detention of a detenu seems to be one in the discretionary power of the appropriate Government. A detenu is entitled to such amenities only which the appropriate government may by a special or general order prescribe in pursuance of section 5 (1) (a). We are, therefore, unable to persuade ourselves to agree with the petitioners' submission, that every democratic country is expected to give a citizen rest, physical happiness, peace of mind and security and that these elementary comforts can be ensured to a detenu only if apart from providing food, raiment and shelter, other amenities of life are also provided, as was sought to be urged on the basis of the observations made by Suba Rao, J. in *Kharak Singh Vs. The State of U.P. and Others*, . The said observations were made in a wholly different context. All that section 5(1) of the Act requires is that the appropriate Government may, by general or special order, specify such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, under which a person in respect of whom a detention order has been made shall be liable to be detained in such place as may be specified in the general or special order. It is entirely within the province of the appropriate government to specify the place in which and the conditions under which a person in respect of whom a detention order has been made is to be detained. Beyond that no obligation is cast on the appropriate government and the conditions so specified by it are not open to challenge.

(23) Notification No. F.5(42)/74-C/HG, dated 8-5-74 fulfills the requirement law as envisaged by section 5(1) of the Act and no exception can be taken to it. That being so, the submissions of the petitioners that maintenance means real maintenance that is the minimal in a civilized society and not a bare or starving

maintenance so that a person is not forced to lead a substandard life, and that the maintenance must vary according to the position and status of a person, including expenses for all conveniences, the amount, however, depending upon the gathering together of all facts of the situation, which submissions were made on the authority of *Faqir Mohammad Vs. Mt. Abda Khatoon and Others*, ; *Kiran Bala Saha Vs. Bankim Chandra Saha*, ; *Her Highness Maharani Kesarkunverba Saheb of Morvi Vs. Commissioner of Income Tax, Bombay North, Kutch and Saurashtra*, *Smt. Leela Devi Shrivastava Vs. Manoharlal Shrivastava*, , have to be rejected. The above cited cases dealt with entirely different position than the one under consideration in the instant petitions.

(24) In *Fakir Mohammad's* case (supra) the question for consideration before the D.B. was whether the maintenance and support of the Wakif and the members of his family or his descendants was a valid charitable object. In that context it was observed that the word "maintenance" is generally intended to mean lodging, boarding, clothing and other such necessities of life and that the said expression stood amplified by the word "support" finding expression in the Wakif deed and might include expenses not only for the necessities of life but also for all conveniences. In *Krishna Bala Saha* case (supra) the Court on the application of the wife for maintenance against the respondent, her husband, while, considering the scope and ambit of the Hindu Adoptions and Maintenance Act (78 of 1956) observed that what the statute prescribed was the minimal maintenance in a civilized society and not a bare or starving maintenance. In *Her Highness Maharani Kesarkunverba Saheb of Morvi's* case (supra) the question under consideration was the deduction allowable under the Income Tax Act in respect of the maintenance allowance received by her. In that context it was held that maintenance does not mean food and raiment and that it must vary according to the position and status of a person. In *Smt. Leela Devi Shrivastava's* case (supra) in fixing the quantum of maintenance for the applicant-wife the Court observed that "the amount of maintenance is a question of fact and it depends upon the gathering together of all facts of the situation".

(25) From a resume of the cases, noted above, it is evident that the object and scope of the two laws, i.e., the Act under consideration by us and the acts considered in the cases discussed above are different. It is a well-settled principle of law that in interpreting a statute the question for consideration is not what may be supposed to have been intended but what has been said in the statute. (AIR 1930 120 (Privy Council) . Further, unless there is any ambiguity in a statute it is not open to the Court to depart from the normal rule of the construction which is that the intention of the legislature is primarily gathered from the words used in the statute. (*The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*,).

(26) In view of the well-settled position of law regarding interpretation of statutes it is futile for the petitioners to contend that the expression "maintenance" used in section 5(1) of the Act be construed in the manner the

said expression is used and intended in acts providing for maintenance of a spouse and dependent-children. the petitioners, Therefore, cannot make a grievance that the said order should be read liberally to grant something more than what is warranted by it on the analogy that while allowing maintenance to a spouse or dependent children the expression "maintenance" had been given a different connotation. In this view of the matter case, *Lenon v. Gibson and Howes Ltd.*, Air 1919 P.C. 142, strongly relied upon by the petitioners, wherein it was observed that in the absence of any context indicating contrary intention it may be presumed that the legislature intended to attach the same meaning to the same words when used in a subsequent statute in a similar connection. is of no assistance to the petitioners.

(27) The Parliament having clearly expressed its intention in section 5(1) of the Act it cannot be said that the expression "maintenance" was used in similar connection providing for maintenance of spouse or dependent children. The notification dated 8/05/1974, specifying the conditions under which a detenu against whom a declaration has been made is to be detained in our opinion constitutes a self-contained provision prescribing the conditions of detention, maintenance discipline etc.

(28) It was then contended that because of his detention a detenu is deprived of pursuing his normal vocation and is thus prevented from supporting his family, detention, Therefore, would assume punitiveness, it being not the objective of the Act to starve the family of the detenu. The inability of a detenu to pursue his normal vocation is a necessary consequence of his detention, no grievance can be made on that count. In not providing for the maintenance of the family of a detenu, the detention would not become punitive, it being within the discretion of the appropriate government to specify in a general or special order such conditions under which the detenu may be detained. Much capital was sought to be made from the rules framed under the Act by the Haryana Government providing for the maintenance allowance to the family of a detenu to contend that such an obligation was enjoined on the appropriate Government. We do not agree. In terms, section 5(1) of the Act does not so provide. Making provisions for the family of the detenu is solely the discretion of the appropriate government. As a matter of fact, this aspect is already under consideration of the Delhi Administration as averred by Shri Arjan Das Sapra, Deputy Secretary (Home) in his reply-affidavit filed in Cr. Writ No. 229 of 1975. On the state of law no relief can be given in this respect in the exercise of the writ jurisdiction of this Court.

(29) The third contention urged was that the petitioners had been equated with undertrial prisoners in that provisions of the jail manual applicable to undertrial prisoners have been made applicable to them. A This grievance is wholly without substance. It was within the competence of the Administrator, Union Territory of Delhi to bodily lift some of the provisions of the jail manual and incorporate them in the general order dated 8/05/1974, making it a comprehensive one, but instead

of so doing he chose to state that every person in respect of whom a detention order has been made under the Act shall be governed by the same conditions as to maintenance, discipline and punishment for breach of discipline as are applicable to undertrial prisoners in police lock-ups, judicial lock-ups or central jail, Tihar, as the case may be but by no stretch of imagination it can be said that the detenus have been equated with undertrial prisoners.

(30) Lengthy arguments were addressed on the various provisions of the jail manual to contend that great difficulty would be encountered in applying its provisions to the detenus. We find no substance in this contention. As and when the Administrator is faced with such a situation it is within his province to issue a special order as envisaged by section 5(1) of the Act.

(31) Equally devoid of merit is the fourth contention, namely, that it was incumbent upon the Administrator Union Territory of Delhi, to frame rules providing for conditions under which a detenu is to be detained, for want of which detention order cannot be held to be valid. All that section 5(1) of the Act enjoins is that the appropriate government may by general or special order specify such place and conditions under which a detenu is to be detained. This requirement of law the Administrator has already complied with in issuing a general order dated 8/05/1974, which, in our opinion, is valid and beyond challenge.

(32) This brings us to the special grievances made by two of the detenus, namely, Sarvshri A. C. Shubh and Kedar Nath Sachdev. According to Shri Shubh (petitioner in Cr.W-123 of 1976) prohibition imposed on him by the Superintendent of Jail not to move out of the ward in which he is detained, denying communication with other co-prisoners was punitive amounting to denial of his right of movement. Shri Shubh, however, did not press prayer No. 4 and sought permission to withdraw prayer No. 2 in prayers clause. We are accordingly not dealing with them. Shri Kedar Nath Sachdev (petitioner in Cr.W.No.99 of 1976) has contended that he is allowed to spend only Rs. 20.00 per month but keeping in view the rising prices it is not possible for him to even buy food at his own expense to supplement the food given by the jail authorities which he alleges is of very poor quality. He further avers that his wife and children have to come from Delhi to Ambala for weekly interviews with him on which heavy expenditure is incurred besides they have to spend a many hours for getting permission for weekly interviews. All this has resulted in converting the preventive detention into punitive detention. He accordingly prays, as noted in an earlier part of this order, that he be allowed to spend Rs. 200 per month during his detention; to transfer him to Delhi Central Jail or to make transport arrangement for his family members and relatives every week for interview with him; to allow him to move out within jail premises for a stroll daily for a specified period; to give him proper medical facilities of his choice; to direct the respondents to fix the duration of interviews of at least two hours without the presence of C.I.D. persons and to make liberal arrangements for interviews so

that his relatives may be allowed immediate interviews without delay.

(33) The grievances noted above partake the facet of personal liberty. In seeking a declaration for regulating the conditions of their detention the petitioners are in fact trying to enforce a facet of their personal liberty to which they have no locus standi. This aspect of the matter was put to the petitioners but they parried it:.

(34) It would be relevant here to consider case, A.K. Gopalan Vs. The State of Madras, . Therein it was urged that because of the detention of the petitioner in a cell, his rights specified in Article 19(1)(a) to (e) and (g) were abridged. Dealing with the contention Kania, C.J., observed (at page 35) that The argument, if correct, should be applicable in the case of punitive detention also to any one sentenced to a term of imprisonment under the relevant section of the Indian Penal Code. So considered, The argument, it was observed must clearly be rejected and that such construction should be avoided. Das J. (as the Lordship then was) refuted the argument as under" (at page 113):-

"THERE can be no doubt that a detention as a result of lawful conviction must necessarily impair the fundamental personal rights guaranteed by Art. 19(1) far beyond what is permissible under Cls. (2) to (6) of that Article and yet nobody can think of questioning the validity of the detention or of the section of the Penal Code under which the sentence was passed. Why ? Because the freedom of his person having been lawfully taken away, the convict ceases to be entitled to exercise the freedom of speech and expression or any of the other personal rights protected by Cl. (1) of Art. 19. On a parity of reasoning he cannot, while the detention lasts, exercise any other personal right, e.g., he cannot eat what he likes or when he likes but has to eat what the Jail Code provides for him and at the time when he is by Jail regulations required to eat. Therefore, the conclusion is irresistible that the rights protected by Art. 19(1), in so far as they relate to rights attached to the person, i.e., the rights referred to in sub-clauses (a) to (e) and (g), are rights which only a free citizen, who has the freedom of his person unimpaired, can exercise."

Further-

"...the rights enumerated in Article 19(1) subsist while the citizen has the legal capacity to exercise them. If his capacity to exercise them is gone, by reason of a lawful conviction with respect to the rights in sub-clauses (a) to (e) and (g), or by reason of lawful compulsory acquisition with respect to the right in sub-clause (f), he ceases to have those rights while his incapacity lasts. It further follows that if a citizen's freedom of the person is lawfully taken away otherwise than as a result of a lawful conviction for an offence, and citizen, for precisely the same reason, cannot exercise any of the rights attached to his person including those enumerated in sub-clauses (a) to (e) and (g) of Article 19(1). In my judgment, a lawful detention, whether punitive or preventive, does not offend against the protection conferred by Art. 19(1)(a) to (e) and (g), for those rights must necessarily cease when the freedom of the person is lawfully taken away. In

short, those rights and where the lawful detention begins."

In the premises, it was held (a: page 113) that "The protection of Art. 19 is co-terminous with the legal capacity of a citizen to exercise the rights protected thereby, for sub-clauses (a) to (e) and (g) of Article 19(1) postulate the freedom of the person which alone can ensure the capacity to exercise the rights protected by those subclauses. A citizen who loses the freedom of his person by being lawfully detained, whether as a result of a conviction for an offence, a result of preventive detention loses his capacity to exercise those rights and, Therefore, has none of the rights which sub-clauses (a) to (e) and (g) may protect". The law having been settled on high authority the grievances put forth by Sarvshri A. C. Shubh and Kedar Nath Sachdeva are untenable and have to be rejected.

(35) A careful reading of the petitions without doubt reveals that the petitioners are in fact trying to enforce a facet of personal liberty which they cannot do at present. Article 21 of the Constitution of India being the sole repository of rights to life and personal liberty, as held in *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, in view of the Presidential orders suspending the enforcement of the rights under Articles 19, 21 and 22 of the Constitution, the facets the petitioners seek to enforce of their right to life and personal liberty cannot be enforced by the petitioners under Article 226 of the Constitution.

(36) In view of our discussion on the various points noted above, the petitions (Criminal Writ Nos. 25 of 1976; 229 of 1975; 123 of 1976 and 99 of 1976) are dismissed in limine.