
(1988) 08 GUJ CK 0004
In the Gujarat High Court

Ranjitsinh Dilubha Jadeja

APPELLANT

Vs

District Magistrate and Another

RESPONDENT

Date of Decision : 22-08-1988

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 9(1), 9(2)

Citation : (1988) 2 GLR 1469

Hon'ble Judges : B.S. Kapadia, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—The petitioner has been detained as per order of detention dated March 4, 1988 passed by the District Magistrate. Jamnagar on the ground that he is a dangerous person as defined under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act") and his activities as such person was (were) likely to adversely affect the maintenance of public order and therefore, with a view to prevent him from indulging in such activities, the detaining authority thought it fit to pass the order as stated above.

2. The order of detention is challenged on the ground that the statements of three persons named hereinbelow and which have been relied upon by the detaining authority are false and fictitious and these persons have, as a matter of fact, filed affidavit to the effect that their signatures were obtained by the police on blank paper. That three persons are Bhanji Ramji, Jatubha Sodha and Kameshgiri Ochhavgiri. Therefore, it is submitted that it should be held that there was no material whatsoever before the detaining authority on the basis of which subjective satisfaction as alleged could have been arrived at.

3. The aforesaid submission cannot be accepted for the simple reason that it is beyond the scope of judicial review under Article 226 of the Constitution of India. The High Court while exercising power under Article 226 of Constitution of India and for that matter even the Supreme Court while exercising power under Articles 32 and 136 of Constitution of India does not sit in appeal over the orders

passed by the detaining authority and over the orders passed by the Advisory Board as well as the orders passed by the appropriate Government confirming the order of detention. This is an ingenious way to invite the Court to exercise its jurisdiction even with regard to the factual aspect of the case. Such grounds based on facts may be agitated before the Advisory Board; the detaining authority and/or before the appropriate Government by way of representation. The jurisdiction of this High Court is very limited. It is essentially confined to procedural safeguards. All that is required to be seen by the High Court is as to whether the procedure adopted by the detaining authority is in accordance with the constitutional provisions contained in Article 22 of the Constitution and in accordance with the relevant provisions of statute concerned.

4. Similar view is taken by this High Court in the case of Smt. ManjulabetrftState reported in [1983(2)] 24(2) GLR 1505 para 23. If this Court examines the question as to whether the signatures were placed by the witnesses concerned on blank papers or after their statements were read over to them, then surely this High Court will be going into the examination of correctness as or otherwise of the facts relied upon by the detaining authority. Once such steps are taken, further a steps will have to be taken by the High Court as to whether the facts in the statements are correct or whether the facts stated in the affidavits are correct. Thus this Court will be doing something indirectly which it cannot do directly. In effect, the submission is that the Court should exercise its powers indirectly though it cannot exercise the same directly. We are afraid, we would not like to usurp the powers indirectly. Such an exercise is not only impermissible, but it will also be highly improper. Therefore we cannot accept the aforesaid submission made by the learned Counsel for the petitioner. In this view of the matter we decline to examine the question as to whether the statements of aforesaid three witnesses were not recorded at all and their signatures were obtained on blank papers.

5. However, the learned Counsel for the petitioner is on a surer footing when he submitted that copies of the statements of eight persons which have been referred to in the grounds of detention were not supplied to the detenu at all together with the grounds of detention. The grounds of detention were served on the detenu on March 4, 1988. It is an admitted position that on this date statement of eight persons whose names have not been disclosed and in respect of which privilege is claimed u/s 9(2) of the Act were not supplied at all. However, later on i. e. on April 6, 1988, the copies of statements of eight persons and copies of a statements of other three persons have also been supplied to the detenu. In the facts of the case, privilege claimed may extend upto the non-disclosure of names and addresses of the persons concerned. But it cannot, in this case, be extended upto non-disclosure of the contents of the statements. In fact no such extensive privilege is claimed.

6. Section 9(1) of the Act enjoins duty on the detaining authority to communicate the grounds to the detenu as soon as may be but not later than

seven days from the date of detention. Admittedly these copies of the statements of aforesaid eight persons have not been supplied to the detenu within the stipulated time. Therefore it is contended that there is breach of the provisions of Section 9(1) of the Act. The learned Counsel for the respondents submitted that these statements cannot be said to be the part of grounds of detention and therefore, there is no breach of provisions of Section 9(1) of the Act. This submission cannot be accepted. The grounds include the conclusion of facts and also the basic facts on which conclusions are founded, (see the decision of the Supreme Court in the case of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, .

7. In the instant case the basic facts would be the alleged anti-social activity of the detenu which adversely affected or which was likely to adversely affect the maintenance of public order. The statements of eight witnesses whose names are not disclosed refer to the alleged anti-social activities of the detenu. Thus whatsoever reflected in these statements are basic facts on the basis of which certain conclusions of facts can be drawn with regard to the anti-social activities of the detenu. Hence these statements would form the part of grounds.

8. Once it is found, as a matter of fact, that the part of grounds is not communicated to the detenu as required under the provisions of Section 9(1) of the Act, the petitioner-detenu can very well argue that he has not been afforded an earliest opportunity of making representation against the order of detention to the State Government. In the instant case admittedly the copies of the aforesaid statements have not been supplied to the detenu till April 5, 1988 which ought to have been supplied latest before March 11, 1988, i.e. within seven days from the date of service of the order of detention. Thus there is clear breach of provisions of Section 9(1) of the Act and also the provisions of Article 22(5) of the Constitution of India inasmuch as the petitioner has been deprived of his right to make adequate and effective representation at the earliest possible opportunity against the order of detention. Therefore, the continued detention of the petitioner-detenu is illegal and void and the same is required to be quashed and set aside.

9. In the result petition is allowed. It is declared that the continued detention of the petitioner-detenu pursuant to the order Annexure "A" dated March 4, 1988 is illegal and void. The petitioner is ordered to be set at liberty forthwith if not required in any other case. Rule made absolute accordingly.