

---

**(1973) 06 KL CK 0026**

**In the High Court Of Kerala**

**Case No :** Original Petition No's. 1977 and 1978 of 1973

R.P. Goyal and Another

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

---

**Date of Decision :** 15-06-1973

**Acts Referred:**

Constitution of India, 1950 — Article 22(5), 226

Maintenance of Internal Security Act, 1971 — Section 10, 11, 3

**Citation :** AIR 1974 Ker 85

**Hon'ble Judges :** P. Govindan Nair, Acting C.J.; George Vadakkal, J

**Bench :** Division Bench

**Advocate :** Kalathi Velayudhan Nair and Co, for the Appellant; Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

P. Govindan Nair, Ag. C.J.

1. These are petitions under Articles 226 & 227 of the Constitution of India for the issue of writs of habeas corpus or other directions or orders commanding the release of Sri Rambilas Gokulka of M/s. Suresh Kumar Raiendra Kumar. a firm carrying on trade in foodgrains in Mattancherry town (O. P. No. 1977 of 1973), and of Sri K. R. Mehta, a partner of M/s. C. K. N. Mehta and Company, dealing in foodgrains in Cochin (O. P. No. 1978 of 1973), on the ground that Article 22(5) of the Constitution has been infringed in ordering their detention u/s 3 (1) fa) (iii) of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as the Act) by Ext. P2 order in each of the original petitions mentioned above. There are also prayers in the petitions for quashing Exts. P2 and P3 in each of these cases by the issue of writs of certiorari or other directions or orders

2. Ext. P2 in each of these cases is an order of the 2nd respondent, the Additional District Magistrate and the District Collector. Ernakulam. Section 3 (1) (a) (iii) of the Act is in these terms:

"3. Power to make orders detaining certain persons.-- (1) The Central Government or the State Government may.-

(a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to-

(i).....

(ii).....

(iii) the maintenance of supplies and services essential to the community, or

(b) .....

it is necessary so to do. make an order directing that such person be detained."

Under Clause (b) of Sub-section (2) of Section 3 of the Act additional District Magistrates specially empowered in that behalf by the State Government are competent to Pass orders u/s 3 (1) (a) (iii). It is not disputed before us that the 2nd respondent has not been so specially empowered.

3. The other respondents to these two petitions are the State of Kerala and the Superintendent, Special Sub Jail, Viyyur. respondents 1 and 3 respectively.

4. The reliefs claimed in these petitions, as already stated, include a prayer for setting aside by the issue of a writ of certiorari or by other order or direction Ext. P3 in each of these cases. Ext. P3 contains the grounds given to the two detenus as envisaged by Section 8 of the Act

5. The order Ext P2 in each of these cases came to be passed in the following circumstances. The circumstances are very similar and the grounds on which actions have been taken are also very similar. The points that have been urged before us were common arguments applicable to the two petitioners. We shall briefly refer to the facts leading UP to the orders and the grounds on the basis of which the orders have been passed. Common questions arise in the cases and we propose to dispose of these two petitions by a common judgment.

6. On the 31st May 1973. there have been surprise inspections of the business places of the two firms and their godowns and certain information is said to have been collected. Two mahazars were prepared at the tune of those inspections and those have been produced in the two cases, marked as Ext P. 1. On the following day, the 1st June 1973, at about mid-night, the two detenus were apprehended and the orders Ext. P2 in each of these cases were served on them. They are now under detention in the special Sub Jail, Vivyur. On the 2nd June, Sri Rambilas Gokulka regarding whose detention O. P. No. 1977 of 1973 has been filed, sent a representation to Government through the Superintendent of the Jail. Sri K. R. Mehta also sent a representation to Government on the same day, 2-6-1973 requesting that he may be released. These representations may fall u/s 14. As far as Sri K. R. Mehta is concerned, the request may fall u/s 15 of the Act as well, which enables the Government to release a person detained,

with or without conditions. After these representations were made, grounds dated 4th June 1973 were served on the two detenues on the next day 5th June, 1973. These grounds contain conclusions which briefly stated are (1) that the two petitioners have been selling foodgrains at exorbitant prices. (2) that they failed to furnish the details of the amounts for which foodgrains have been purchased by them when directed. (3) that they have been interrupting the free supply and sale of foodgrains and (4) that they are influential persons of the area. Sri K. R. Mehta particularly being the President of the Foodgrains Merchants' Association, and they have been influencing other merchants in the area, and the practice followed by them has been induced to be followed by others as well.

7. When these petitions came UP before us for admission, we did not issue notice in the usual form ordering the production of the detenues, but requested the Advocate-General, who was present in Court, to take notice of the petitions and suggested an early date for hearing. In accordance with our request, the Advocate-General took notice and counter-affidavits were filed by the 2nd respondent in each of these cases. We do not think that we should go into the details contained in the counter-affidavits but we must state that, in these counter-affidavits the stand taken by the 2nd respondent is that the grounds contained in Ext. P3 are not vague and that there is no reason for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution. We may at this stage mention that though these petitions are stated to be under Articles 226 and 227 of the Constitution, they are sought to be sustained only as petitions under Article 226 of the Constitution.

8. Before we deal with the arguments that have been advanced, it will be useful to refer to the provisions in Article 22 of the Constitution and the relevant provisions of the Act. Article 22 is in Part III of the Constitution dealing with fundamental rights, and Article 22(1) states that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours. But Article 22(3) contains qualifications and we are concerned with Sub-clause (b) of that Article which states that nothing in Clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention. Then, Article 22(4) dealing with "preventive detention" prohibits any law being passed which shall authorise the detention of a person for a longer period than three months unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention and the proviso further limits the period of detention by stating that such detention shall not in any case exceed the maximum period prescribed by law made by Parliament or under any law made by Parliament.

under Sub-clauses (a) and (b) of Clause (7) with which we are not concerned. Then comes the provision in Article 22(5) which we may extract:

"(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".

This is the most important provision with which we are concerned. This provision in the Constitution contains two protections (1) that the authority making the order shall, as soon as may be communicate to the detenu the grounds on which the order has been made and (2) that the said authority shall afford him the earliest opportunity of making a representation against the order.

9. Consistent with these provisions the Act provides by Section 8 that the authority making the order of detention shall, as soon as may be but ordinarily not later than five days and in exceptional circumstances and for reasons to be re\* corded in writing, not later than fifteen days, from the date of detention, communicate to him the grounds on which the order has been made. This section also specifically provides that the detenu shall be afforded the earliest opportunity of making a representation against the order tp the appropriate Government. Sub-section (31 of Section 3 of the Act provides that when any order is made under this section by an officer mentioned in Sub-section (2). he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars, as in his opinion have a bearing on the matters, and no such order shall remain in force for more than twelve days. after the making thereof unless in the meantime it has been approved by the State Government. There is a proviso to Sub-section (3) of Sections which states that, where u/s 8 the grounds of detention are communicated by the authority making the order after five days but not later than, fifteen days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words, "twenty-two days" shall be substituted- Sub-section (4) of Section 3 Is also important. It enjoins that when any order is made or approved by the State Government under this section. the State Government shall, within seven days. report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for the order.

Now turning to Section 10 of the Act, we see the provision that save as expressly provided in the Act in every case where a detention order has been made under this Act. the appropriate Government shall within thirty days from the date of detention under the order, place before the Advisory Board constituted by it u/s 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report by such officer under Sub-section (3) of

### Section 3.

Section 11 deals with the procedure to be followed by the Advisory Board which we need not refer.

10. Counsel on behalf of the petitioners, in what we may term to be somewhat elaborate but useful arguments referred to a catena of decisions ranging from the decision in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, where a Constitution Bench of the Supreme Court had occasion very early in the history of the Constitution to consider the scope and ambit of the guarantee under Article 22(5) of the Constitution to the latest pronouncement of the Supreme Court on the subjects in *Manu Bhusan Roy Prodhan Vs. State of West Bengal and Others*, and urged that by the principles laid down in these decisions, it is well-established that the grounds stated in Ext. P3 are vague, and on such grounds, it is not possible for any authority under the Act to pass orders of detention and that the orders of detention are illegal, violative of the guarantee under Article 22(5) of the Constitution, a guarantee which is also a fundamental right, apart from the orders being violative of the guarantee under Article 19(1)(f) of the Constitution. The other decisions referred to are *Tarapada De and Others Vs. The State of West Bengal*, . *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, . *Shibban Lal Saksena Vs. The State of Utter Pradesh and Others*, . *Rameshwar Lal Patwari Vs. State of Bihar*, : *Motilal Jain Vs. State of Bihar and Others*, *Sushanta Goswami v. State of West Bengal* AIR 1969 SC 1004 ; *Pushkar Mukherjee and Others Vs. The State of West Bengal*, *Mishrilal Jain Vs. The District Magistrate, Kamrup and Others*, ; *B. Sundar Rao and Others Vs. State of Orissa*, . *Tapan Kumar Mukherjee v. State of West Bengal* AIR 1972 SC 840 . Anal *Anal Chandra Banarjee Vs. The State of West Bengal*, and *Mintu Bhakta Vs. The State of West Bengal*, , The principles established by these decisions may now be summarised:

(1) there are two guarantees under Article 22(5) of the Constitution: the guarantee that a detenu must be told the grounds on which he has been detained and the further guarantee that he shall be afforded the earliest opportunity of making the representation against the order.

(2) the sufficiency of the grounds of detention is not justiciable; that is a matter entirely within the purview of the authorities functioning under the Act,

(3) if non-existent or irrelevant grounds have been relied on for the purpose of passing an order of detention there can be no question of satisfaction at all: such orders will be set aside by Court.

(4) that if the grounds are vague. there will be violation in given cases of the first part of Article 22(5) and in all cases of the guarantee under the second part of Article 22(5). A word of explanation may be necessary The second part of the rule is based on the proposition that the representation envisaged by Article 22(5) of the Constitution must be an "effective representation a representation which can give facts and details which would be convincing to those whq have to

take them into account, pro-babilising a conclusion in favour of the detenu. Such a convincing representation can be furnished by the detenu only if details which form the facts on which the grounds are based are supplied to him and a number of decisions of the Supreme Court have taken the view that if such facts had not been furnished to the detenu there will be a deprivation of the guarantee under the second part of Article 22(5).

(5) the detention order must be based on a satisfaction which existed at the time the order was passed. So the grounds on which the order was passed must exist at the time of the order. As a corollary to the above proposition, no additional grounds can be furnished to the detenu : and

(6) notwithstanding what is stated in principle No. 4 enumerated above, a detenu may ask for further particulars and the authorities may suo motu furnish particulars or details of the grounds of detention.

We do not think, we must refer to the other principles laid down by the Supreme Court for the purpose of these cases

11. Counsel for the petitioners relied mainly on proposition (4) stated above and urged that in the absence of details the grounds furnished are vague. The Advocate General on the other hand relied on proposition (5) and argued, that the defect if any, is only lack of details and this can be cured by furnishing more particulars. He therefore further contended that the petitions at this stage are premature and should not be entertained. Counsel for the petitioners would have it that this Court if it is satisfied that the grounds are vague in the sense that details have not been furnished should intervene even at this stage, as what is involved is the liberty of citizens and this does not brook any delay however short.

12. We think that these petitions, at this stage can be disposed of on the answer to the short question whether they should be entertained now. The petitioners can make representations and the State Government is bound to consider them. If the representations are such that they would carry conviction and that the orders of detention could not stand the State Government then would naturally cancel the orders in accordance with the principles laid down by the Supreme Court. In this respect we must refer to the decisions of the Supreme Court in *Jayanarayan Sukul Vs. State of West Bengal*, . *Prof. Khaidem Ibocha Singh, etc. Vs. The State of Manipur*, and *Amulya Chandra Dey Vs. The State of West Bengal*, . These decisions have laid down that the State Government is bound to consider as early as possible, having earlier afforded an opportunity to the detenu to make effective-representations, and satisfy themselves that the orders of detention must continue. This, the Supreme Court has ruled, is the duty of the State Government and should be done by the State Government before the matter is referred to the Advisory Board and this duty is therefore an additional duty cast on the State Government which it cannot under law shelve. If that be the position, this court ought not at this stage sit in judgment over a matter

which can very well be dealt with by the State Government and it is submitted by the Advocate-General that this Court must assume that the State Government will deal with the matter with the same anxiety and consideration that will be bestowed upon the matter by this Court and therefore we should decline Jurisdiction at this stage. He further contended that the grounds furnished to these petitioners do not contain any inherent vagueness. They are sufficiently clear and easily understandable, but the only defect, if any is the lack of details. These details, according to the Advocate-General, need not be stated in the grounds of detention. Whatever that be he argued that it is open to the detenus to ask for details and it is also open to the State Government, suo motu, in the light of the discussions that took place at the time of the hearing of these cases and based on the decisions of the Supreme Court, to supply these details. The two petitioners had not yet made their representations after the receipt of the grounds on the 5th June, and that, if as a result of the discussions here, it is felt by the State Government it is necessary to supply details in order to satisfy the principles that have been laid down by the Supreme Court, we must assume that that will be done. This being the position, we do not think we should at this stage hold that the grounds are vague which conclusion may very well turn out to be a wrong conclusion.

13. On the question whether a Court should interfere at such a stage as the one in these cases, no direct authority excepting an early case of the Calcutta High Court reported in *Raman Lal Rathi Vs. Commissioner of Police and Others*, in which Justice P. B. Mukherjee specifically considered the matter, had been brought to our notice. The question was formulated by the learned Judge thus in para 4 of the judgment:

"Another point of considerable importance has been urged on behalf of the State. It has been argued that the structure of the Preventive Detention Act especially after its amendment is such that this application is premature and cannot be maintained before the Advisory Board examines the case of detention of the person concerned".

The learned Judge's conclusion is in Paragraph 27:

"I therefore hold that the petitioner has the legal and constitutional right to approach this Court before he has made any representation or before there is any reference to the Advisory Board and before the time for such reference or report by the Board has expired".

Reliance was also placed on the decision of the Travancore-Cochin High Court in *Thiruvadinatha Pillai v. District Magistrate Trivandrum* AIR 1951 TC. 130 . We find that the judgment in the Travancore-Cochin case is mainly, if not exclusively, based on the ground that the order of detention had not been served on the detenu. The case is no authority for the proposition that this Court can and, or should interfere before the Government had considered the representation and before the Advisory Board had looked into the matter. Counsel for the petitioners

invited our attention specifically to the decision in *Mishrilal Jain Vs. The District Magistrate, Kamrup and Others*, and urged that the approach to the Court therein was after the approval by the State Government but before the matter was placed before the Advisory Board. He also referred to the decision of the Supreme Court in *P.L. Lakhanpal Vs. Union of India (UOI)*, and said that the approach to the High Court was immediately after the detention. The two Supreme Court decisions relied on did not deal with the question as to whether the approach to the High Court was proper at that time. The matter had not been urged before the Court and in *P.L. Lakhanpal Vs. Union of India (UOI)*, the petition was dismissed. The matter is therefore *res integra*. except for the decision of Justice P. B. Mukharji of the Calcutta High Court Justice Mukharji did not then have the benefit of the decisions of the Supreme Court which we have referred to. those in *Jayanarayan Sukul Vs. State of West Bengal*, : Prof. Khaidem Ibocha Singh, etc. Vs. The State of Manipur, and *Amulya Chandra Dey Vs. The State of West Bengal*, which have now categorically laid down that irrespective of the consideration by the Advisory Board, the State Government must not only provide the earliest opportunity to the detenu to make an effective representation, but must themselves consider whether the detention must continue. This aspect was then at the time the Calcutta decision was rendered) not clarified, though most of the matters arising from Article 22(5) had been dealt with by the Constitution Bench of the Supreme Court in the decision in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, . However, this aspect had not been dealt with in that judgment

14. A writ of habeas corpus is a writ of right but not of course and. as far as the High Court is concerned, the existence of alternative remedies can be taken into consideration in dealing with applications for the issue of such writs though the Supreme Court in petitions under Article 32 of the Constitution providing a guarantee in the nature of a fundamental right cannot take such matters of alternative remedies into consideration. The decisions on the subject have been summarised by Seeryai in his commentaries on the Constitution (1966 Edn.) at pages 624 and 625. The real question arising in cases of this type is not the existence of an alternative remedy but whether the order, at least as far as the State Government is concerned, had become final before its reference to the Advisory Board. Further the Advisory Board itself is a body consisting of Persons who have the necessary legal training and therefore the necessary background to deal with questions which involve the violation of Article 22(5) and of Article 19(1)(f). The protection envisaged by the constitution of an Advisory Board for looking into the matter is a substantial protection. It cannot be termed illusory. Normally therefore, before the order has become final by the State Government applying its mind to the question of the existence or otherwise of grounds justifying detention and the Advisory Board expressing its opinion as to whether there is cause for detention or not, it should not be interfered with by this court and this court should not deal with the question on insufficient material. This is a matter which gave us a good deal of anxiety for, counsel for the petitioners

rightly reminded us that we are dealing with the guaranteed right of freedom of the citizens of this country, and urged that this Court should see that no person is kept under custody even for the shortest period. He contended that the details have been furnished in the counter-affidavit and that this had not been done. On the other hand he pointed out that the contention was that the grounds were not vague even in the sense that they lacked details. These are weighty arguments but we do not consider that it is for this Court, at any rate, in the first instance, to examine the particulars of the grounds. As early as in the decision in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, the Supreme Court envisaged the need of asking for or supplying particulars. In paragraph 7 at p. 161 of the decision the Court said:

"By their very nature the grounds are conclusions of facts and not a complete detailed recital of all the facts.....

No Part of such "grounds" can be held back nor can any more "srounds" be added thereto.....Ordinarily, the "grounds" in the same sense of conclusions drawn by the authorities will indicate the kind of prejudicial act the detenu is suspected of being engaged in and that will be sufficient to enable him to make a representation setting out his innocent activities to dispel the suspicion against him. Of course if the detenu is told about the details of facts besides the grounds he will certainly be in a better position to deal with them". And from paragraph 9 of the judgment it is clear that details and particulars which form the basis of the conclusions (grounds) can be supplied later In the next paragraph, the Court considered the significance of the words "as soon as may be" and shall afford "earliest opportunity" of making representation and said that furnishing of particulars should be within such time that the detenu shall have the earliest opportunity to make representations. This being the position. it is quite possible that the main complaint before us of lack of details is a rectifiable lacuna or defect and if it is possible to cure that defect or supply the lacuna within the earliest possible time, and if there is a consideration of the representations of the detenus after the supply of the details or particulars which may be sufficient to uphold the grounds, the Court will be acting against public interest in ordering the release of these petitioners. We should not hazard on any such venture. We notice that apparently responsible persons, who it is alleged in the main affidavits and the reply affidavits, have been doing everything within their powers to induce the flow of foodgrains into the State are now under detention. But this in the nature of things, seems to us to be unavoidable. There is a machinery provided by the Act as envisaged by Article 22(5) of the Constitution to protect freedom. This machinery that human ingenuity has suggested for protecting freedom cannot be said to be unsatisfactory though in all such cases of human endeavour to achieve an ideal there will be shortcomings.

15. The guarantee of freedom under the Constitution is not merely a protection of the individual freedom. It Is a concept of importance, a way of life, the embodiment of the principle that the individual counts. This is as important as

public interest. When the conduct of an individual clashes with the interests of society the individual might lose his freedom. So the only question is whether there was such conduct and consequently public interest had been jeopardised. If the answer to the question is in the affirmative, individual freedom must give way. and public interest demands that the threat to such interest is removed. It may take a short while finally to determine whether public interest has been so jeopardised. But this is inevitable. This Court should not assume to itself functions that have been statutorily conferred on the Government and examine the matter itself at this stage. Mere delay of a few days and the consequent detention for that period are not sufficient for this Court to adopt such a course.

16. We are therefore constrained to dismiss these petitions. We do so.

17. We must not part with these cases without expressing the hope that what we have indicated in this judgment will be borne in mind by the authorities concerned and the liberty of the petitioners will not be interfered with for a moment longer than is necessary and that there would be a very prompt consideration of the issues after affording full opportunity to the petitioners to make representations.