
(2007) 02 OHC CK 0009
In the Orissa High Court

Sailendra Kumar Jora

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 12-02-2007

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (2007) 104 CLT 62 : (2007) 1 OLR 438

Hon'ble Judges : A.K. Ganguly, C.J;N. Prusty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Ganguly, C.J.—This Writ Petition has been filed by challenging an order of detention passed against the Petitioner under the provisions of the National Security Act, 1980 (hereinafter referred to as "the Act") the order of detention is dated 19.07.2006. The grounds of detention are dated 23.07.2006. Several grounds have been given in support of the Petitioner's detention under the provisions of the said Act. We are not going to discuss anything on the grounds of detention in question in view of the reasons, which are discussed by us.

2. Learned Counsel appearing on behalf of the Petitioner submits that in the instant case the Petitioner's Fundamental Right of making representation against the detention order under Article 22(5) of the Constitution of India has been breached. In support of the said contention, Learned Counsel for the Petitioner submits that along with the grounds of detention, the report of the Superintendent of Police, Keonjhar on which the grounds of detention are based, has not been supplied to him. In support of such contention, the Petitioner has taken a specific ground, being ground No. 10 at Page-6 of the Writ Petition. The said ground is as follows:

For that the report of the superintendent of Police, Keonjhar which formed the basis of detaining the Petitioner having not been supplied to him the order of detention is liable to be quashed.

3. In this matter a counter affidavit has been filed even though " not by the detaining authority, but by one Bipin Bihari Mohapatra, who was working as Collector and District Magistrate, Keonjhar at the time of filing of the counter affidavit. In the said counter affidavit in paragraph-18, the District Magistrate has accepted "the grounds off detention, which were served on the detenu, were based upon the report submitted by the Superintendent of Police, Keonjhar to the detaining authority, i.e. District Magistrate, Keonjhar and that contains all the facts stated in the report of Superintendent of Police, Keonjhar to make representation against his detention.

4. It is therefore clear that the grounds of detention, which were served on the Petitioner, were based on the report of the Superintendent of Police, Keonjhar. Admittedly the report of the Superintendent of Police, Keonjhar has not been furnished in this case along with the grounds of detention.

5. Learned Counsel for the Petitioner submitted that in case of such admitted non-supply of the report of the Superintendent of Police along with the order of detention, the order of detention must be quashed. In support of such contention Learned Counsel relied upon a decision of the Division Bench of this Court in the case of Pramila Bastia Vs. State of Orissa and Others, The Division Bench of this Court while dealing with similar contentions in the case of Pramila Bastia has come to the following finding.

xxx xxx xxx. It is also well settled that in preventive detention jurisprudence whatever little safe guards the Constitution and the enactment authorizing such detention provide assume utmost importance and must be strictly adhered to. A specific averment has been made in the additional affidavit filed by the Petitioner that the report submitted by the Superintendent of Police, Cuttack was considered by the detaining authority (O.P. No. 2) while passing the order of detention but no copy of the same was supplied to the detenu. xxx xxx xxx

6. Learned Counsel for the Petitioner submits that in view of the well-settled position of law, the detention order in the instant case cannot be sustained. We find that there is a lot of force in the aforesaid contention raised by the Learned Counsel for the Petitioner.

7. Learned Counsel for the detaining authority, however, made an attempt to submit that the Petitioner is not entitled to receive the source of information, which led to the framing of the grounds of detention. In support pf his contention, he relied on a decision of the Supreme Court.in the case of Beni Madhob Shaw Vs. The State of West Bengal, . Learned Counsel relied upon the said Judgment in order to contend that where grounds of detention has been disclosed, the same is sufficient to enable the Petitioner to make a representation and non disclosure of the source of information or the exact word of information should not be complained of.

8. We are of the opinion that the said Judgment is not relevant to decide the controversy in this case, The law of preventive detention was not developed at

the present stage when the Judgment was delivered by the Supreme Court in the case of Beni Madhob Shaw (supra).

9. The Supreme Court has subsequently held in several Judgments that the materials on which the grounds of detention are based and whatever materials have been considered by the detaining authority in passing the order of detention, should be made available to the Petitioner to enable him to make a proper representation against the grounds of detention. This subsequent development of law has been noted and referred by the Division Bench of this Court in the case of Pramila Bastia v. State of Orissa and Ors. (supra). Even though, Learned Counsel for the detaining authority has tried to submit that the grounds of detention virtually contains all the materials, which were there in the report of the Superintendent of Police, Keonjhar, even then, the fact remains that the report of Superintendent of Police has not been supplied to the detenu.

10. It is well known that in matters of preventive detention, the Court is entitled to insist that all the procedural safeguards should be complied with. The Supreme Court repeatedly in various cases has taken such a view. Reference in this connection may be made to the decision of the Supreme Court in the case of Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, . The relevant observations made by the Learned Judges are set out here.

This is an area where the Court has been most strict" and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure the Court has not hesitated to strike down the order of detention....

11. Therefore, we are of the view that in the instant case, non-supply of report of the Superintendent of Police, Keonjhar is a fatal lapse on the part of the detaining authority and on that ground itself, the order of detention is liable to be quashed and we quash the same.

12. We, therefore, hold that the order of detention-dated, 19.07.2006 passed by the Collector-cum-District Magistrate, Keonjhar and the confirmation there of dated 26.09.2006 under Annexure 3 against the Petitioner are quashed forthwith. The Petitioner is set at liberty forthwith and should be released unless he is detained in connection with any other case by any other appropriate authority. The Writ Petition is allowed. There would be no order as to costs.

13. The Registry of this Court is directed to communicate this order to the concerned Superintendent of the District Jail as well to the detaining authority forthwith.

N. Prusty, J.

14. I agree