
(2016) 04 AP CK 0007
In the Andhra Pradesh High Court
Case No : Writ Petition No. 30736 of 2015

Saraswathi Bai

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Citation : (2016) 4 ALT 640 : (2016) 2 AndhLDCriminal 976 : (2016) 3 Crimes 354

Hon'ble Judges : G. Chandraiah and A. Shankar Narayana, JJ.

Bench : Division Bench

Advocate : Sri A. Prabhakar Rao, Advocate, for the Appellant; Advocate General (TG) and G.P. for Home (TG), for the Respondent

Final Decision : Disposed Off

Judgement

A. Shankar Narayana, J.—The detenu is one Gullu Singh, son of Rajan Singh, resident of Baba Balakdas Math, Upper Dhoolpet, Mangalhat, Hyderabad. He is termed as a "drug offender". He indulges in peddling of ?narcotic drugs? among innocent people in Hyderabad City, highly endangering the lives of youth and innocent people causing irreparable damage to the body parts including central nervous system, thereby crippling mental and physical health of the people who are addicted to drugs and thus, his illegal and highly dangerous activities are prejudicial to maintain public order and public health at large while affecting the health of young generation.

2. The present writ petition is filed by the mother of the detenu Smt. Saraswathi Bai seeking the relief of Habeas Corpus under Article 226 of the Constitution of India to produce the detenu and set him at liberty by declaring the detention order passed by respondent No.2 and confirmed by respondent No.1, referred to herein above, as illegal, arbitrary and violative of Article 21 of the Constitution of India.

3. The Commissioner of Police, Hyderabad City - respondent No.2 herein,

referring to the above activities of the detenu, passed detention order, dated 28-05-2015, and also referring to that the detenu was involved in three cases i.e., (1) Crime No.63 of 2013, (2) 1763 of 2014-15 and (3) 56 of 2015 registered under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') of Central Crime Station, Hyderabad, and that the detenu was arrested on 07.03.2013, in the first crime and remanded to judicial custody, but subsequently, he was released on bail and the case ended in conviction by the learned Metropolitan Sessions Judge, Hyderabad by inflicting sentence of rigorous imprisonment for eight (8) months and to pay a fine of Rs. 1,000/- in S.C. No.47 of 2014, dated 20.10.2014, and that he was arrested on 21.11.2014 in the second case and remanded to judicial custody and subsequently released on bail on 17.12.2014 and in the third crime he was arrested on 27.02.2015 and remanded to judicial custody and subsequently released on bail on 25.03.2015; and saying so, recorded his satisfaction that the detenu is a 'drug offender' as defined in Clause (f) of Section 2 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

4. The relevant details have been delineated in the grounds of detention annexed to the detention order, dated 28th May, 2015. Approval of detention order was made by the Government - respondent No.3 in G.O.Rt. No.1613 G.A. (Law & Order) Department, dated 08.06.2015.

5. Thereafter, the State of Telangana has confirmed the order of detention agreeing with the opinion of the Advisory Board constituted under the Act and directed detention of the detenu to be made for a period of twelve (12) months from the date of detention i.e. 29.05.2015.

6. In her affidavit, she has referred to three crimes, referred to hereinbefore, for the offence under Section 20(b) of NDPS Act. Only one ground is urged raising objection to the order of detention contending that it suffers from the vice of illegality as the Superintendent of Central Prison, Cherlapalli, did not explain the contents of detention order and grounds of detention as directed by the detaining authority, but, however, signatures were taken from the detenu though, he does not know writing and reading English language. That has been the stand taken in paragraph No.6 of the affidavit. In paragraph No.7, the effect thereof has been mentioned stating that non-furnishing of crucial documents impaired right of her son to make effective representation against the detention order.

7. The detention order is also challenged on the ground that the material enclosed along with the grounds of detention order are in English language and some of them are not legible, due to which, the detenu could not make effective representation against the detention order.

8. Though, other grounds such as the Inspector of Police, Mangalhat Police Station, Hyderabad, called a report from the Superintendent of Central Prison, Cherlapalli, and basing on the said report, collected material relating to the

persons involved in the NDPS Act and placed before the detaining authority with a request to pass detention order and that the report of the competent medical officer has not been enclosed along with the grounds of detention either from the chemical analyst or from the doctor indicating that consumption of ?ganja? causes ill health and thereby affects the public health and in the absence of said reports, the detention order passed by respondent No.2 is vague and based on irrelevant grounds and liable be set aside, but, the said grounds were not insisted upon during the course of arguments by the learned counsel for the petitioner.

9. Ancillary ground is raised stating that copies of the documents supplied were illegible and thus, safeguards provided by the Constitution have not been followed occasioning prejudice to the detenu in making an effective representation.

10. Counter is filed by respondent No.2. The grounds and relevant material have been narrated elaborately. Concerning non-supply of the material in Hindi language, respondent No.2 would state that the detenu while acknowledging the detention order and the grounds of detention has endorsed that he studied upto fifth (5th) class in English medium and admits before the Jailor, Central Prison, Cherlapally, that he understood the grounds and the order explained in English and Hindi languages about the order issued by respondent No.2. It is stated that the petitioner never made a complaint to the detaining authority, Advisory Board and the Government about the same. But, for the first time, he is making such an allegation and the same is not correct.

11. In paragraph No.11 of the counter affidavit, respondent No.2 states that the detention order and the grounds of detention were served in Hindi language and all legible documents were served on the detenu while refuting the contention that the material on the basis of which the order of detention was made was not supplied to him in Hindi language.

12. The other submissions made by respondent No.2 in the counter, in our view, need neither elaboration nor reference.

13. Thus, only one ground has been insisted upon by the detenu as to non-supply of the documents in Hindi language claiming that he does not know reading and writing in English language.

14. In the aforesaid backdrop, we confine ourselves to that particular ground raised by the detenu.

15. Heard Sri A. Prabhakar Rao, learned counsel for the petitioner, and the learned Advocate General (TG) for respondent No.1 as well as the learned Government Pleader for Home (TG) for respondent Nos.2 and 3.

16. To support his submission, learned counsel for the petitioner places reliance on the decisions of Hon"ble Supreme Court and a Division Bench of this Court.

17. In *Harikisan v. State of Maharashtra and others* (1)AIR 1962 SC 911, a Constitutional Bench of the Hon'ble Supreme Court, while emphasising that for the detenu, to make his effective representation against the order of detention, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities have attributed to him and in cases where the grounds are several oral translation or explanation given by the police officers serving those on the detenu, would not amount to communicating the grounds as communication in the said context must mean bringing home to the detenu effective knowledge of the facts and circumstances, held in paragraph Nos. 7 and 8, thus:

"7. It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that "he has studied upto 7th Hindi Standard, which is equivalent to 3rd English Standard". The High Court negatived the contention raised on behalf of the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the Order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the appellant did not know enough English to understand the grounds, contained in many paragraphs, as indicated above, in order to be able effectively to make his representation against the Order of Detention. The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detenu, it means communication in the official language, which continues to be English; secondly the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the Order of Detention and the grounds, would be enough compliance with the requirements, of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi, in our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in the case of *The State of Bombay v. Atma Ram Sridhar Vidya*, (1) clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenu should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting

out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenu would not amount to communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the Order of Detention is based.

8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand and in a script which he can read, if he is a literate person."

18. In *Powanammal v. State of Tamilnadu & another* (1999) 2 SCC 413, as to non-supply of Tamil version of order of remand despite the detenu specifically stating that he could not understand English language, the Hon'ble Supreme Court, held in paragraph Nos.15 and 16 thus:

"15. Adverting to the facts of this case, the appellant has made a representation for supply of the Tamil version of the copy of the order of remand and specifically stated that the detenu could not understand the English language. Admittedly, the Tamil version of the order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenu need not show that any prejudice was caused to her due to the non-supply of the Tamil version of the order of remand. Therefore, the High court is not correct in holding that the non-furnishing of the copy of the order of remand would not in any way prejudice the detenu. 16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenu be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."

19. A Division Bench of this Court in *V. Muthuvelu v. State of A.P. & others* [W.P. No.8022 of 2015, dated 22.09.2015] W.P. No.8022 of 2015, dated 22.09.2015, to which one of us (Justice A. Shankar Narayana) is a party, by following the principles laid down in *Powanammal's Case* (Supra 2), in the context of non-supply of material, on the basis of which, order of detention was made, while expressing that prejudice would occasion as the right of the detenu is deprived to

make an effective representation guaranteed under Article 22 (5) of the Constitution, recorded our observations in paragraph Nos. 14 and 15, thus:

"14. Though it is stated in the order of detention that the grounds of detention and material are ordered to be supplied in Telugu, English and Tamil languages, it is clear that no material is supplied to the detenu by translating into Tamil. All the crimes registered are in the State of Andhra Pradesh and while referring to such crimes under various Sections, reasons are recorded so as to invoke the provisions of the Act, but such material is not supplied in Tamil language. It is true that from the material placed on record, it is clear that the detenu has signed in English language in token of receiving grounds etc., but merely because he has signed in English, we cannot say that he is well-versed with English language. It is common practise that many those who sign in English are not conversant with the said language. Thus, we are not convinced to accept the plea of the learned Government Pleader that non-supply of material in Tamil language, did not affect the right of detenu to make an effective representation. In *Hadibandhu Das*? case (2 supra), the Hon"ble Supreme Court has held that non-supply of translation and script in the language which is known to the detenu amounts to denial of right of making effective representation guaranteed under Article 22(5) of the Constitution. Further, in *A.C.Razia*?s case (3 supra), the Hon"ble Supreme Court has held that the grounds of detention together with supporting documents should be made available to the detenu in a language known to him. Paragraph 10 of the said judgment reads as under :

"10. We are concerned here with clause (5) of Article 22. The dual rights under clause (5) are: (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority, and (ii) the right to be afforded the earliest opportunity of making a representation against the order of detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this article so as to effectuate the guarantees/safeguards envisaged by the Constitution under clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu. The duty to apprise the detenu of the right to make representation to one or more authorities who have power to reconsider or revoke the detention has been cast on the detaining authority. So also the duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasised in more than one case and where there was inordinate delay in the disposal of representation, the detention was set aside on that very ground."

To the same effect is the judgment in *Powanammal*?s case (4 supra), in which, the Hon"ble Supreme Court has held that the documents which are made basis for passing an order of detention must be furnished in the language understood by the detenu and non-supply of such material would be fatal. In the aforesaid

judgment, by further making a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and on document which finds a mere reference in the grounds of detention, the Hon''ble Supreme Court has held that non-supply of copy of document relied upon in the grounds of detention is held to be fatal and it is further held that the detenu need not show that any prejudice is caused to him.

15. The aforesaid judgments will fully support the case of petitioner. In this case, we are of the view that though the instances of several crimes registered against the detenu are made basis for passing an order of detention, the non-supply of material which is relied on for passing such order, is fatal and we are of the view that by not supplying such material, the detenu is deprived of his right to make an effective representation, guaranteed under Article 22(5) of the Constitution."

20. Learned counsel for the petitioner places reliance on the decision of the Hon''ble Supreme Court in Manjit Singh Grewal alias Gogi v. Union of India and others 1990 (Supp) SCC 59. The Hon''ble Supreme Court expressing that failure to supply legible copies despite appellant asking for supply of certain copies of the documents, opined that since safeguards provided by the Constitution have not been followed, held that the decision of the High Court cannot be sustained.

21. We have perused copies of the documents annexed to the counter filed by respondent No.2. We found that the documents supplied were not illegible as sought to be viewed by the learned counsel and, therefore, we are not in agreement with that submission of the learned counsel for the petitioner.

22. The learned Government Pleader for Home placed reliance on the decision of the Hon''ble Apex Court in Bhola Bhuiya v. State of West Bengal (1975) 3 SCC 253. The facts therein would show that the petitioner claimed that he was an illiterate person and since the grounds of detention were not explained to him in his own language, he was denied an opportunity to make an effective representation against the order of detention. When the matter came up for hearing, the Hon''ble Supreme Court asked the respondent to make an affidavit on the question ?whether the grounds furnished to the detenu were explained to him in his language which he could understand?, and, accordingly an affidavit was filed by the Police Inspector who served the detention order and the grounds on the petitioner. In that context, the Hon''ble supreme Court quoting that the affidavit shows that the grounds of detention were explained to the petitioner in Hindi, which was the language that the petitioner understands, held that the order of detention is not vitiated on account of non-compliance with the provisions of Article 22(5) of the Constitution of India. This authority has been relied on by the learned Government Pleader in the context of endorsement occurring in the material filed along with the counter by the respondent No.2, which we would like to refer to after referring to other decision relied on by the learned Government Pleader.

23. In the case of State of Tamil Nadu and another v. Abdullah Khader Batch and

another (2009) 1 SCC 333, the duty of the Court to see whether non-supply of any document would in any way prejudicial to the case of the detenu, is insisted upon by the Hon"ble Supreme Court explaining that "primarily, the copies, which form the grounds of detention are to be supplied and non-supply thereof would prejudice the detenu, the documents which are merely referred for the purpose of narration of facts, in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.?"

24. Taking support from the aforesaid decisions, the learned Government Pleader would contend that the detenu has not projected the prejudice that had been caused to him in non-supply of the documents in his known language. But, however, he is silent about whether the documents supplied to the detenu constituted the basis for making the order of detention or whether mere reference is made to them in the detention order.

25. Now, we advert to the endorsement on which, learned Government Pleader has been mainly resting on in the direction of compliance of Constitutional safeguard. The endorsement runs thus:

"Received copy on 29.5.15 at 6.30 pm. I studied upto 5th class in English medium. I understood the grounds & order explained in English & hindi language about the order issued by the Commissioner of Police.

Sd/-

(Gullu Singh)"

Since the portion occurring just above the said endorsement recorded also gains much significance in appreciating the endorsement, we would like to extract the same, which runs thus:

"Served by me on 29.5.2015 at 6.30 pm. I have read and explained the contents of the detention order to the detenue which is in English, in hindi language and admitted that he understood the content. Then he received the copy of order along with grounds & signed before me and Sri P. Laxmaiah jailor, Cherlapally Central Prison.

Sd/- 29.5.15

Inspector of Police

P.S. Mangalhat,

Hyderabad"

26. In our view, two important aspects emerge from the above extracted portions. Firstly, both the portions have been in the same handwriting. It appears that one and the same person has written both the portions. We are unable to comprehend as to why the Inspector of Police or the Jailor, Central Prison, Cherlapalli, as the case may be, has not taken the endorsement in the handwriting of the detenu himself, when it is mentioned in the endorsement that

the detenu studied upto fifth (5th) class in English medium and understood the grounds and the order of detention explained in English and Hindi languages, which, certainly, gains greater significance in the present context in judging whether the constitutional safeguard has been complied with or not. We have no hesitation to answer the same in the negative.

27. The second aspect which we would like to point out is even taking an extreme view for argument sake, still, the objection raised by the detenu, stood unanswered. The reason being, the endorsement as well as the other portion recorded by the Inspector of Police would only refer to the supply of order of detention and the grounds of detention, but, absolutely silent as to the supply of documents or explaining the purport of the documents in Hindi language which constituted the basis for forming an opinion that the detenu was a ?drug offender?. So, that infirmity, which crept into, is carried forward and we, therefore, find that there has been no compliance of constitutional requirement of supplying the relevant material either in English language or its translated copies in Hindi language, which language is the known language of the detenu.

28. Therefore, we have no hesitation to reject the submission of the learned Government Pleader for Home in holding that the decisions on which he placed reliance would render no assistance in advancing his argument.

29. To sum up, we hold that there is merit in the submission of the learned counsel for the petitioner that non-supply of documents and translated copies thereof in Hindi language which constituted the basis for making the order of detention by respondent No.2, further confirmed by respondent No.1, had caused serious prejudice to the detenu disabling him from making an effective representation to the authorities and the same accounts for violation of Constitutional guarantee engrafted under Article 22(5) of the Constitution of India.

30. For the aforesaid reasons, the Writ Petition is allowed by quashing the order of detention, dated 28.05.2015, which was confirmed by G.O. Rt. No. 2310, General Administration (Law & Order) Department, dated 26.08.2015, directing the respondents to release the detenu forthwith by setting him at liberty. However, we make it clear that such order of release shall be given effect to if custody of the detenu is not required in connection with any other case registered against him. There shall be no order as to costs.

31. As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, stand closed.