

(1983) 08 MAD CK 0007
In the Madras High Court
Case No : Write Petition No. 5242 of 1983

Saroja

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 29-08-1983

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3
Constitution of India, 1950 — Article 22

Citation : (1985) 5 ECC 37

Hon'ble Judges : Ratnavel Pandian, J; K.M. Natarajan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ratnavel Pandian, J.—The petitioner herein is seeking the issuance of a writ of habeas corpus for the release of her husband Chinnadurai

alias Durai, the detenu, now detained in the Central Prison, Madras, in pursuance of an order of detention passed by the first respondent in G.O.

Ms. No. 236, Public (Law and Order-D) Department, dated 15th February, 1983 issued u/s 3(1)(ii) of the Conservation of Foreign Exchange

and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act).

2. The grounds on which the detention order has been made are as follows:- On a specific information, the Aranthangi Customs Officers arranged

for a road block on Aranthangi-Avudayar Koil level-crossing gate on the night of 13/14th August, 1982. At about 5 a.m. on 14th August, 1982,

the officers noticed a Standard Van bearing registration No. MSQ 3095 coming towards Aranthangi. The vehicle did not stop despite the signals

given by the officials. However, the said vehicle stopped at a little distance as the level-crossing gate had already been closed at the instance of the

officials. Two persons who travelled in the vehicle escaped in the darkness. The officers caught hold of the third person whose name was revealed

as Thiru R.M. Selvaraj, son of Rayaiah Servai, Nadukudiyiruppu, Perungudi Avanam, Ponpethi Post, Avudayar Koil Taluk. The vehicle contained

19 bags of foreign goods, viz., 820.80 metres of 100 per cent polyester gaberdine suitings, 2,610 metres of white shirtings, 6 National Panasonic

Radio cassette recorders-Model RX 5030-F, one number National Panasonic Radio cassette recorder-Model 1540, 2 Nos. of National

Panasonic Radio cassette recorders-Model RX 1440-W, 3 Nos. of RQ 2157 National Panasonic Tape recorders, 2 Nos. of portable radios-

Model R 303, and 85,700 Nos. of zips fasteners, all valued at Rs. 3,23,796. There was no valid permit or document for licit importation of the

above goods. Therefore, the officers seized the above goods. Therefore, the officers seized the abovesaid 19 gunny bags of foreign goods together

with the vehicle MSQ 3095 which is of the value of Rs. 50,000 for action under the Customs Act, on the reasonable belief that the abovesaid

goods had been smuggled into India and that they are liable for confiscation under the Customs Act.

3. Thiru R.M. Selvaraj gave a statement on 14th August, 1982, wherein he stated that he is related to the detenu, that on the night of 13th August,

1982, at about 7 p.m. the detenu called him and instructed him to go to the first new bridge between Mimisal and Arasaneri in two bullock carts,

one driven by him (Selvaraj) and another by one Pethiyaiah, staying in the detenu's house and that accordingly Selvaraj proceeded to the spot

where the detenu was also present with one Shanmugam. Then the detenu took them to a salt pan to the south of Pudur Road and loaded these 19

bags in the two bullock carts, with instruction to proceed to Ponpethi Bridge where a van would be waiting. The detenu also accompanied the

carts. As the carts reached the bridge, the abovesaid van was found parked. The detenu, Selvaraj, Shanmugam and Pethiyaiah loaded all the 19

bags in the van. The detenu instructed Selvaraj to travel in the van, upto the old hospital at Aranthangi and after its passing the gate, to come back

on the next day. Accordingly, Selvaraj left along with one Kader Mohideen and the driver, and it was only on the way the van was intercepted at

Aranthangi level-crossing gate. The further facts placed before the detenu are that Selvaraj in his statement has referred to certain smuggling activities of the detenu, stating that the detenu was doing smuggling for the past ten years in association with one Kader Mohideen of Trichy and one Kurangu Sait, a bangle merchant at Trichy. In the subsequent statement recorded from Selvaraj on 16th August, 1982, the said Selvaraj has stated that he had earlier assisted the detenu on two occasions in smuggling and that on such occasions 15 to 20 bags were sent by lorries. It is further stated that in spite of the summons requiring the detenu's appearance on 30th September, 1982 before the Customs officials, which summons was served on him by affixture on the doors of his house on 27th September, 1982, neither he made himself available for appearance, nor did he respond to the summons.

4. The first respondent, before whom the above materials were placed, drew the requisite subjective satisfaction and passed the impugned order on 15th February, 1983. The detenu was taken into custody in pursuance of the said order only on 30th May, 1983, and detained in the Central Prison at Madras on 31st May, 1983. The grounds of detention along with the documents and other materials mentioned in the grounds of detention were served on the detenu on 1st June, 1983. The State Government had referred the matter to the Advisory Board for its instructions on 10th June, 1983. While the matter was pending before the Advisory Board, the detenu forwarded his representation dated 14th June, 1983, addressed to the Advisory Board. The Advisory Board, after considering the materials placed before it and the representation made by the detenu, submitted its report on 4th July, 1983 to the Government, stating that there was sufficient cause for the detention of the detenu concerned. The Government, after having agreed with the opinion of the Advisory Board and also considering all the materials inclusive of the grounds of detention and the representation made by the detenu, confirmed the order of detention and directed the detention to continue for a period of one year from the date of his detention, viz., 30th May, 1983, by its order passed in G.O. Ms. 1130, Public (Law and Order-D) Department, dated 19th July, 1983. It is as against this order of detention, the present writ petition has been filed by the wife of the detenu.

Mr. S. Pitchai, learned Counsel appearing for the writ-petitioner, would raise the following contentions:

1. As the materials on record disclose that the satisfaction of the detaining authority is based on no materials, the impugned order of detention

cannot be justified under the provisions of the statute, as being based on any subjective satisfaction, and as such the order is liable to be quashed ;

2. The averments made by the first respondent in his counter affidavit, that Selvaraj was not examined on 10th August, 1982, and that the grounds

of detention do not mention any such statement having been recorded from the said Selvaraj on 10th August, 1982, are contrary and diametrically

opposed to the statements of facts found in the order of detention served on the detenu in his vernacular language, viz., Tamil.

3. As the grounds of detention, translated into Tamil, served on the detenu, disclose that Selvaraj was examined on 10th August, 1982, the non-

supply of the statement of Selvaraj dated 10th August, 1982, is violative of Article 22(5) of the Constitution, in that the detenu is deprived of the

opportunity of making an effective representation.

5. Before advertng to the arguments advanced by the learned Counsel for the writ-petitioner, we would like to point out that in the present case

the order of detention is mainly based on the statements dated 14th August, 1982, and 16th August, 1982, made by Selvaraj (who was one of the

persons who travelled in the van MSQ 3095) and the inventory mahazar dated 14th August, 1982, and also on the conduct of the detenu in failing

to appear before the authorities On 13th August, 1982, as required in the summons addressed to him and his failure to send any reply to the said

summons.

6. The documents supplied to the detenu along with the grounds of detention, which have been placed before the detaining authority for drawing

his requisite satisfaction, are:

1. A mahazar dated 14th August, 1982;

2. An inventory mahazar dated 14th August, 1982;

3. Statement of Thiru R.M. Selvaraj, dated 14th August, 1982;

4. Mahazar dated 16th August, 1982 (search of premises of Thiru S. Veeramchand);

5. Mahazar dated 16th August, 1982 drawn at Trichy Customs Divisional Office;
6. Further statement of Thiru R.M. Selvaraj, dated 16th August, 1982;
7. Statement of Thiru S. Veeramchand dated 16th August, 1982;
8. Mahazar dated 27th September, 1982 for service of summons on Thiru Chinnadurai (the detenu);
9. Summons dated 17th September, 1982.

7. According to Mr. Pitchai, the detaining authority, de hors the statement of Selvaraj, has not taken into consideration any other statement or any

other mahazar for drawing the requisite subjective satisfaction to pass the the impugned order, though besides the statement of Selvaraj, the

statement of Veeramchand recorded on 16th August, 1982 and the mahazar dated 16th August, 1982, regarding the search of his premises had

been furnished to the detenu obviously for the reason that these documents were placed before the authority for taking into consideration by the

detaining authority, though not referred to in the grounds of detention for passing the impugned order. He would further state that besides the

statement of Selvaraj, there is no other material referred to in the grounds of detention for holding that the detenu was involved in smuggling

activities and the averments in paragraph 1, sub-paragraphs (iv) and (v) of the detention order, that the detenu was indulging in smuggling activities

for ten years along with one Khadar Mohideen and one Korangu Sait of Trichy and that Selvaraj in his further statement dated 16th August, 1982,

had stated that he had helped the detenu twice in similar activities of smuggling, are too vague and do not give any particulars regarding the place,

date and time of the alleged activities. In meeting this contention, the first respondent, in paragraph 4 of his affidavit, would simply state as follows:

It is submitted, the grounds are not vague. Para. 1(iv) and 1(v) of the grounds of detention refer only to the smuggling activity mentioned by

Selvaraj in his statement and hence it cannot be contended that the grounds are vague in any manner.

8. Learned Counsel for the petitioner, relying on the decision of the Supreme Court in Khudiram Das Vs. The State of West Bengal and Others, ,

would state that the subjective satisfaction of the detaining authority is not wholly immune from judicial reviewability, and therefore, the subjective

satisfaction of the detaining authority in this case, which is based on no material,

can be subjected to judicial scrutiny. Their Lordships of the Supreme Court in the above decision have laid down the principle as follows:

But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The Courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the Courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority: if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad.

9. He would also draw the attention of this Court to the decision of this Court in *Shakul Hammed A.M.S. v. Union of India* 1982 LWC 136. In

that decision, a Bench of this Court has pointed out thus:

It is common place of preventive detention law that the satisfaction of the detaining authority is a subjective satisfaction. Even so, the statute insists that the order of detention must be supported by grounds on which the detaining authority had obtained for itself the requisite satisfaction. This provision is the clearest indication in the statute to show that subjective satisfaction is not mere self-satisfaction, but which the detaining authority arrives at on the materials on record. It follows that if the satisfaction of the detaining authority is based on no material, the resultant order of detention cannot be justified under the statute as being based on any satisfaction, objective or subjective.

10. Therefore, there cannot be any controversy on the principle of law that no order of detention can be based on no material and that the subjective satisfaction of the detaining authority cannot be said to be wholly immune from judicial reviewability. The question is whether the impugned order is based on no material at all. As pointed out supra, we have got only the statement of R.M. Selvaraj and the fact of seizure of some contrabands from the van in which Selvaraj was travelling. Therefore, the question that would arise for our consideration is whether the materials on which the satisfaction is based is such as a rational human being would consider as connected with the fact in respect of which the

satisfaction is to be reached. In the decision referred to above, viz., Khudiram Das Vs. The State of West Bengal and Others, the Supreme Court

has held that the satisfaction must be grounded on materials which are of rationally probative value and the grounds on which the satisfaction is

based must be such as a rational human being can consider as connected with the fact in respect of which the satisfaction is to be reached and that

they must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute, and that if the

authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into

account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would

be bad.

11. A close examination of the statement of Veeramchand alias Korangu Sait, furnished to the detenu, would show that it does not make any

reference about the involvement of the detenu in the activities of smuggling with which he was concerned. The statement in the grounds of detention

that the detenu was in the association of Korangu Sait for ten years doing smuggling is not at all spoken to by Veeramchand alias Korangu Sait in

his statement dated 16th August, 1982, and to that extent the material mentioned in the grounds of detention, stands unsupported by the statement

of Korangu Sait, and therefore that part of the material ought not to have been taken into consideration by the detaining authority, Mr. Pitchai

submits that at no point of time the house of the detenu was searched and any incriminating material was seized. It is not known from the materials

supplied to the detenu as to whether Khader Mohideen has been examined in order to test the statement of Selvaraj. However, it is clear that no

statement involving the detenu in the act of smuggling has been obtained either from Korangu Sait or from Khader Mohideen of Trichy. The

materials that are supplied, viz., the statements of Selvaraj dated 14th August, 1982, and 16th August, 1982, as rightly pointed out, contain only a

vague statement that the detenu was doing smuggling activities for ten years and that the said Selvaraj had assisted him in the smuggling activities on

two occasions. Neither the date nor the year nor the nature of the goods transacted, is made mention of in the said statements. In answer to the

submission made by the petitioner that the particulars given in paragraph-1, sub-paragraphs (iv) and (v) are vague, the first respondent in the

counter has simply stated that--

It is not correct to say that the allegation against the detenu regarding his smuggling activities is too vague, lacking in particulars.

12. Therefore, in the light of the observations of the Supreme Court in Khudiram Das Vs. The State of West Bengal and Others, and in Shakul

Hameed v. Union of India 1982 LW CrL 136, the contention raised by the learned Counsel that the materials are not of a rationally probative value

for forming the subjective satisfaction cannot be said to be without force, especially in view of the fact that the detenu admittedly did not travel in

the van and that Korangu Sait did not at all make any reference about the smuggling activities of the detenu and also in view of the lack of specific

particulars about the past activities of the detenu.

13. The next submission of Mr. Pitchai is that though the detaining authority has referred only to the statement of Selvaraj and the seizure of the

goods effected from the van, as having been taken into consideration for forming his subjective satisfaction, some more particulars, viz., the

statement of Veeramchand alias Korangu Sait dated 16th August, 1982, and a mahazar dated 16th August, 1982, relating to the seizure of goods,

were placed before the detaining authority, and the detaining authority should have considered those materials also before passing the detention

order and thus, according to him, there were extraneous materials placed before the detaining authority, which, though not referred to in the

grounds of detention, should have weighed with the mind of the detaining authority for passing this order and hence the impugned order is vitiated.

This submission, in our view, cannot be easily brushed aside. On the side of the respondents, there is no assertion that the statement of

Veeramchand and the mahazar relating to the recovery of the goods from the house of Veeramchand, had not been considered. If really those

documents, viz., the statement of Veeramchand and the mahazar relating to the seizure of goods from the house of Veeramchand, were not

placed before the detaining authority for passing the impugned order, there was no necessity for the detaining authority to furnish these documents

to the detenu on whom the detaining authority is legally obliged to serve only

such of those documents on which the subjective satisfaction has been formed:

14. According to the learned Counsel for the petitioner, though the detenu has signed the representation in English, he is not conversant with the English language. In our anxiety to find out whether the detenu knows English or not, we directed the detenu to be produced before this Court and accordingly he was produced before this Court. We dictated to him two simple sentences and asked him to write them. Even though he has written the words dictated to him, in capital letters, there are a lot of mistakes, and when we asked him about his academic qualification, he has stated that he has studied only upto the VI standard. From the way in which he has written the two sentences and the answer he has given about his qualification, which stands uncontradicted, we hold that he is not very well conversant with the English language so as to understand the order of detention in English served on him.

15. The Supreme Court in *Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others*, has observed that Article 22(5) of the Constitution, which requires that the grounds of detention must be communicated to the detenu, should be strictly complied with. It has been further observed that the word "communicate" is a strong word and it means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands. See also *Harikisan Vs. The State of Maharashtra and Others*, , *Hadibandhu Das Vs. District Magistrate and Another*, and the decision of a Division Bench of this Court consisting of Gokulakrishnan, J., and Nainar Sundaram, J., in *Ravindran v. State of Tamil Nadu* 1983 LW CrI 177. In the present case, the detenu has been served with a copy of the grounds of detention translated into Tamil, i.e., the language known to the detenu. In paragraph 1(iii) of the grounds of detention, it is stated thus:

16. In the representation made before the Advisory Board by the detenu, the detenu has referred to the alleged statement of Selvaraj dated 10th August, 1982, and has complained that there was no such statement. In paragraph 5 of the affidavit filed by the writ-petitioner, it is stated thus:

I state that ground No. 3 does not mention the correct dates of the alleged

statements made by Selvaraj. In any event, the petitioner has not been furnished with a copy of the statement dated 10th August, 1982, alleged to have been given by Selvaraj.

17. By way of answer to the above grievance, the Joint Secretary to the Government, Public Department, who has sworn to an affidavit dated 3rd

August, 1983, has in paragraph 5 thereof stated as follows:

As regards the contention in para-5 of the affidavit, it is submitted that it is incorrect to say that in Ground No. 3 the correct dates of statements

recorded from Thiru R.M. Selvaraj have not been mentioned and that the petitioner had not been furnished with a copy of the statement dated

10th August, 1982, alleged to have been given by Selvaraj. Ground No. 3 i.e., para-1(iii) of the grounds of detention does not say that any

statement has been recorded from Thiru R.M. Selvaraj on 10th August, 1982. In fact the vehicle was intercepted and the contraband goods seized

only at 00.05 hrs. on 14th August, 1982. Thiru R.M. Selvaraj was not examined on 10th August, 1982. He was actually examined on 14th

August, 1982 and 16th August, 1982 and copies of both the statements have been furnished to the detenu.

18. On going through the copy of the grounds of detention served on the detenu, we, in our anxiety, verified the same with the original in Tamil,

available on the file. The date of the alleged statement of Selvaraj is mentioned only as 10th August, 1982. Under these circumstances, it is highly

surprising as to how in the counter it is stated that ground No. 3 mentioned in paragraph 1(3) of the grounds of detention does not say that any

statement has been recorded from R.M. Selvaraj on 10th August, 1982, and that R.M. Selvaraj was not examined on 10th August, 1982. This

shows first that the authority at the time of signing the Tamil version of the detention order did not at all apply his mind to the averments relating to

the date of the examination of Selvaraj and secondly that at the time of preparation of the counter, nobody has looked into the copy of the grounds

of detention served on the detenu in Tamil. This statement in the counter is factually incorrect. The only explanation, if at all the respondent could

give, (though he has not given such an explanation in the counter), would be that at the time of the preparation of the counter, they did not look into

the Tamil version, but only into the English version in which the date of the

statement of Selvaraj is mentioned as 14th August, 1982, and that this is only a clerical mistake made while preparing the Tamil version and therefore in view of the English version and furnishing of the copies of the statements of Selvaraj to the detenu, no prejudice can be said to have been caused to the detenu. Whatever be the explanation to be offered by the respondents, the fact remains that in the copy of the grounds of detention served on the detenu in the vernacular language known to him, it has been mentioned that that statement was recorded from Selvaraj on 10th August, 1982. This statement, in our view had certainly caused a grave prejudice to the detenu in making an effective representation before the Government. In fact, as pointed out in the representation submitted to the Advisory Board, the detenu has been misled by this statement. The respondent does not at all give any explanation as to how this mistake occurred, but simply denies the factual position.

19. Therefore, we are of the view that the impugned order passed by the first respondent suffers from the legal infirmities pointed out above and as such it is vitiated.

20. In the result, we allow this writ petition, quash the impugned order and direct the detenu to be set at liberty forthwith.