
(1973) 12 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Writ Petition No. 5 of 1973

Shri I.C. Gupta and Another

APPELLANT

Vs

The District Magistrate and Another

RESPONDENT

Date of Decision : 31-12-1973

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3, 3(1), 3(2), 8

Citation : (1973) 2 ILR HP 1221

Hon'ble Judges : R.S. Pathak, C.J.;C.R. Thakur, J

Bench : Division Bench

Advocate : Inder Singh and Bhawani Singh, for the Appellant; B. Sita Ram, General and P.N. Nag, for the Respondent

Judgement

R.S. Pathak, C.J.—This is a petition for writ in the nature of habeas corpus by Shri I.C. Gupta and Shri Jagat Singh Negi who have been detained under the Maintenance of Internal Security Act, 1971. We have already allowed the petition by our order dated December 12, 1973, and we now proceed to set out the reasons for the order.

2. The Petitioners are Advocates practising at Nahan. On November 27, 1973 warrants for their detention were issued by the District Magistrate, Sirmur u/s 3(2) read with Section 3(1)(a)(ii) of the Maintenance of Internal Security Act on the basis that the detention was necessary in the interest of the security of the State and the maintenance of public order. The Petitioners were arrested and are detained in jail. On December 2, 1973, late in the evening, they were served with the grounds for their detention. On December 3, 1973, the present petition was filed. The Petitioners allege that the order of detention is vitiated by mala fides, and that the grounds for their detention do not fall within Section 3 of the Act, and are also vague so as to deny them the right of representation to the Advisory Board vested in them under the law.

3. The learned Advocate General, appearing for the Respondents, has raised a number of preliminary objections. They are considered below.

4. It is urged that there is no proper affidavit verifying the petition and our attention has been drawn to the circumstance that the verification clause in the affidavit does not conform to the prescribed form of verification set out in the Rules of Court. That deficiency has now been made good by the Petitioners. A fresh affidavit dated December 11, 1973 has been filed, and there is no dispute that it conforms to the rules.

5. The second objection is that while the Petitioners have alleged mala fides against the Respondents, the District Magistrate, Sirmur and the Superintendent of Police, Sirmur, the latter have been impleaded by reference to their office and not in their personal capacity. It seems to us unnecessary to express any opinion on the question of mala fides in this petition, and therefore we need not pronounce on the validity of this objection.

6. The third objection is that the affidavit verifying the petition should have been filed by the Petitioners themselves, and not by Shri R.L. Gupta, father of the first Petitioner. We are referred to Rule 1 of Chapter 4-F (a) of Volume V of the Rules of Court. In explanation for the omission to file affidavits of the Petitioners, it has been stated by Shri R.L. Gupta that the Petitioners asked for law books in order to enable them to prepare the affidavit but they were not made available and facilities for drawing up the affidavit were wanting. This averment was also made in the original affidavit filed with the petition. No attempt was made in the reply filed by the Respondents to controvert this allegation. An affidavit has been filed much later before us by the Superintendent of the Jail. Where the Petitioner are lodged, in which an attempt has been made to controvert the allegations made by the Petitioners. This affidavit could have been filed at the time when the Respondents filed their reply to the petition. It has been filed at a very late stage. It is pointed out by the learned Advocate General that the petition was not accompanied by a proper affidavit when it was filed and the occasion for filing the present petition arose only after a proper affidavit had been filed on December 11, 1973 in verification of the petition. The explanation is, in our opinion, wholly inadequate. There was nothing to prevent the Respondents from controverting the allegations when they filed their return to the petition and to set out facts demonstrating that the necessary facilities had been made available to the Petitioner. We are not satisfied that in the circumstances of this case the Petitioners could have complied with Rule 1 of Chapter 4-F (a) of Volume V of the Rules of Court when the petition was drawn up and filed in this Court.

7. The fourth objection of the learned Advocate General is that the petition should have been amended when the grounds for detention had been supplied to the Petitioner. That objection need not detain us, because the Respondents themselves have annexed the grounds to the return filed by them.

8. The fifth objection is that the Petitioners have not chosen to personally rebut the truth of the grounds for detention and have left it to a third person, the father of the first Petitioner, to do so and it is pointed out that there was enough time between December 3, 1973, when the petition was drawn up, and

December 11, 1973, when the affidavit of Shri R.L. Gupta was filed, for the Petitioners to have filed an affidavit sworn by themselves. Since in our opinion the petition when filed could have been supported by an affidavit of Shri R.L. Gupta, it was not necessary for the Petitioners to have sworn fresh affidavits themselves.

9. The sixth objection of the learned Advocate General is that after the petition was filed the State Government approved of the order of detention on December 6, 1973 and the State Government should have been impleaded as a necessary party to the petition. It is urged that the order of detention passed by the District Magistrate has merged in the order of the State Government. We are unable to agree. The order of detention passed by the District Magistrate remained an effective order throughout. The State Government merely accorded its approval to the order. That does not mean that the order under which the detention of the Petitioners was effected is an order of the State Government. It remains the order of the District Magistrate. The Petitioners are aggrieved by the order of detention and it was not necessary for them to implead the State Government as a Respondent to the petition.

10. The seventh objection of the learned Advocate General is that the petition should have been presented to the Deputy Registrar and not put into the box provided in this Court for filing applications generally. Reliance is placed on Rule 1 of Chapter 1-A of Volume V of the Rules of Court. We are not satisfied that the omission of the Petitioners to comply with that rule debars us from entertaining this petition.

11. The last objection of the learned Advocate General is that the petition is not maintainable inasmuch as the Petitioners had a right to challenge the order of detention by a representation, made u/s 8 of the Act, to the Advisory Board. The objection proceeds upon a misconception. The scope of enquiry in the present petition is different from that in a representation to the Raman Lal Rathi Vs. Commissioner of Police and Others, This objection is also rejected.

12. We may point out at this stage that an application was made on December 12, 1973 by the learned Advocate General for permission to file two fresh affidavits on behalf of the Respondents in support of their case. The application was filed after learned Counsel for the Petitioners had already closed his submissions and the learned Advocate General was in the midst of his submissions on behalf of the Respondents. The application was filed at a very late stage. A perusal of the fresh affidavits shows that they are nothing but an attempt to fill up the shortcomings of the return, originally filed by the Respondents, which have come to light upon the arguments addressed by learned Counsel for the Petitioners. The learned Advocate General says that he is entitled to file these affidavits because the petition became a proper petition only when it was verified by an affidavit filed on December 11, 1973. The affidavit filed by learned Counsel for the Petitioners on that date merely repeats what is stated in the affidavit filed originally with the petition, and in no way have the

contents of the petition been altered. The affidavits now filed by the learned Advocate General could have been filed earlier when the return of the Respondents was filed.

13. The learned Advocate General also says that he was not granted sufficient time by the Court to file a return on behalf of the Respondents and therefore also he is entitled to file the fresh affidavits. It appears that when the petition came up before the Court for hearing in admission on December 5, 1973, the learned Advocate General took time for filing a return, on December 7, 1973, when the petition was listed again, further time was taken on behalf of the Respondents for filing a return. The petition was then directed to be listed on December 10, 1973. It also appears that a copy of the petition was served on the office of the learned Advocate General on December 4, 1973. It is clear that the learned Advocate General had all the time upto December 10, 1973 for drawing up and filing a proper and complete return to the petition. It must not be forgotten that the petition is one for a writ in the nature of habeas corpus and the liberty of two citizens of this State is at stake. In all the circumstances before us, we are of opinion that it is not open to the learned Advocate General to complain that he has not had sufficient time for filing an adequate reply.

14. Upon a perusal of the grounds of detention before us, it seems apparent that most of them are vague and cannot enable the Petitioners to make any adequate representation. It is settled law that where some of the grounds are vague or extraneous and they do not form a minor or unessential part of the grounds of detention the entire order of detention must fail. Cases where vague or extraneous grounds have been considered as a ground for making an order of detention invalid are *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, , *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, , *Shibban Lal Saksena Vs. The State of Uttar Pradesh and Others*, *Pushkar Mukherjee v. The State of West Bengal* 1970 S.C. 852.

15. A perusal of the grounds of detention shows that the Petitioners are said to have engineered fresh elections in the Patel Engineering Company Workers' Union, and to have given their active support to a group led by Shrikant Tiwari. The Shrikant Tiwari group is said to have commenced a reign of terror against workmen who did not belong to it, and reference has been made to a number of First Information Reports lodged in connection with the violence which is said to have broken out. Throughout, the grounds refer to the Petitioners as either inciting the Tiwari group or covertly leading it and guiding it in its violent activities. While particulars have been given of the activities of the Shrikant Tiwari group there is no indication whatever as to the specific manner in which the Petitioners have been involved therein. The vaguest language has been employed so far as they are concerned. There is an allegation that the Petitioners have been inciting the Shrikant Tiwari group in order to derive pecuniary benefit from the funds of the Union, but here again the matter is purely one of speculation and there is nothing in the grounds of detention which can enable

the Petitioners to return a specific reply to the allegation. The remaining part of the grounds of detention refer to the activities of Miss Shyama Sharma, and details are given of the manner in which she is said to be creating disaffection against the Government and among the workers of the Patel Engineering Company. In this regard also, all that is said in respect of the Petitioners is that they have been providing secret instructions and guidance to Miss Shyama Sharma. The entire case in relation to the Petitioners presents the vaguest appearance. Towards the end there is an allegation that one of the Petitioners, Jagat Singh Negi, went with Miss Shyama Sharma to collect the funds of the Union and they took the amount in a car belonging to the Petitioner, I.C. Gupta, and drove to Dehra Dun for depositing the money there. Nothing in this allegation can justify the detention of the Petitioners under the Maintenance of Internal Security Act. As we are of opinion that the grounds of detention are vague and some of them are also irrelevant it seems to us that the detention cannot be sustained in law.

16. There is the further contention of the Petitioners that all the grounds of detention have not been supplied to them and reliance is placed on paragraph 3 of the return filed by the Respondents which states that "besides the averments made by the Respondents in the grounds of detention there are other grounds also to justify the Petitioners' detention". The return is verified by the affidavit of the District Magistrate who made the order of detention and of the Superintendent of Police. It is further stated in the return that all the grounds have not been incorporated in the grounds of detention because disclosure of all of them would be against the public interest. An attempt has been made by the learned Advocate General and Shri P.N. Nag, appearing for the Respondents, to explain that reference in that part of the return was in fact intended only to the facts which constituted the grounds of detention. We are unable to accept the explanation. The language of the return is clear. No doubt the statute authorises the detaining authority to keep back facts which form the basis of the grounds of detention where disclosure of those facts is against the public interest. But the return does not speak of facts kept back, it refers to grounds not disclosed. Moreover, the explanation is supported by an affidavit verified by the Superintendent of Police only. There is no affidavit of the District Magistrate who is the proper person to have offered the explanation. It is he who made the order of detention and he is the appropriate person to have explained whether all the grounds of detention or some of them only have been disclosed to the Petitioners. Now if all the grounds of detention are not disclosed to the detenu there can be no dispute that the right of representation granted to him by the law is defeated. That was also the view taken by the Patna High Court in *Chandra Sheikhar Prasad Singh v. The State of Bihar* AIR 1951 Pat, and by the Allahabad High Court in *Durgadas and Ors. v. Rex* AIR 1949 All. 148.

17. The last contention of the Petitioner is that the detention of the Petitioner is motivated by mala fides. In as much as we are of opinion that the detention is invalid for the reasons that the grounds are vague and extraneous, and that all

the grounds have not been communicated to the Petitioners, we consider it unnecessary to enter into the question whether the detention is vitiated by malafides.

18. Upon the aforesaid considerations we hold that the detention of the Petitioners is invalid and that they are entitled to an order directing that they be set at liberty forthwith.