

(1975) 03 GUJ CK 0003
In the Gujarat High Court

Smt. Manjulaben and Another

APPELLANT

Vs

C.T.A. Pillay and Others

RESPONDENT

Date of Decision : 27-03-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 22, 226

Citation : (1976) CriLJ 889 : (1975) GLR 730

Hon'ble Judges : T.U. Mehta, J;A.D. Desai, J

Bench : Division Bench

Judgement

A.D. Desai, J.—In these two petitions what is challenged are the two orders of detention of the two detenus who are detained at the Central Jail, Jaipur under the orders of detention passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the impugned Act). There is no dispute that both the detenus were at first detained at Baroda under the orders of detention passed under the provisions of the Maintenance of Internal Security Act, 1971 as amended by the Maintenance of Internal Security (Amendment) Ordinance, 1974, The detenus were first lodged in the Baroda Prison but later removed to the Central Jail at Jaipur, where fresh orders of detention under the impugned Act were served on them. In these writ petitions the petitioners who are the relatives of the detenus seek to challenge constitutionality and legal validity of the impugned Act and the orders of detention dated September 19, 1974, the continuance of emergency declared by the President on December 3, 1971 under Article 352 of the Constitution of India and the Presidential Order dated December 25, 1974. The facts averred in the petitions disclose that both the detenus have their place of residence within the State of Gujarat and also carry on their business within the State of Gujarat. They have their families who reside in the State of Gujarat. It is alleged in the petitions that the detenus are entitled to come back to the State of Gujarat for the purposes of residence as well as to carry on their business and they also desire to come back to the State and to reside with their families in the area within the jurisdiction of this Court, It is the case of the petitioners that by the

impugned order of detention, the detenus have been deprived of their right to move freely throughout the territory of India and specially within the territory of the State of Gujarat and to reside and to carry on their business therein. A part of cause of action, therefore, has thus arisen within the jurisdiction of this Court and the Court has the jurisdiction to entertain the writ petitions under Article 226(1A) of the Constitution of India.

2. The Additional Collector of Customs, Ahmedabad "has filed the affidavit in this case on behalf of the respondents stating that the detenus were lodged in the Central Prison, Jaipur in pursuance of the orders passed under the provisions of Maintenance of Internal Security Act, 1971, as amended by the Maintenance of Internal Security (Amendment) Ordinance, 1974 and in the Jail Register, entries in respect thereof have been made. The orders of detention passed under the Maintenance of Internal Security (Amendment) Ordinance, 1974 came to an end as the Ordinance had been repealed by the impugned Act which came into force from December 19, 1974. The detenus were released on December 19, 1974 at Jaipur. After the release the detenus were again served with fresh detention orders dated December 19, 1974 passed u/s 3(1) of the impugned Act. The orders of detention were served on the detenus near the gate of the Central Prison, Jaipur and the detenus were admitted in the Jail in pursuance of the detention orders dated December 19, 1974 and this fact is proved by the entries in the jail register. The contention of the respondent is that the orders of detention of the detenus dated December 19, 1974 which are challenged in these petitions are signed by the Joint Secretary, Government of India, Ministry of Finance, New Delhi at New Delhi, the orders of detention were served on the detenus near the Gate of the Central Prison, Jaipur and under the circumstances, no part of cause of action has arisen within the jurisdiction of the Gujarat State and, therefore, this Court has no jurisdiction to entertain these petitions.

3. Even though the challenge in the writ petitions is very wide the hearing of these writ petitions is restricted as to whether this Court has jurisdiction to entertain the petitions under Article 226(1A) of the Constitution and this is the only point which we are required to determine at this stage. The other challenges in respect of the constitutionality of the Act or continuance of emergency or the Presidential order or the emergency declared by the President are reserved and are to be argued along with other writ applications wherein similar points are taken.

4. Article 226(1) of the Constitution provides that notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. Article 226(1A) is as follows:

226(1A): The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

This clause was added by Section 8 of the Constitution (Fifteenth Amendment) Act, 1963. Therefore, in order to determine whether this Court has jurisdiction to entertain the writ petitions what is to be seen is whether the cause of action, wholly or in part, arises for the exercise of power under Article 226 of the Constitution within the territorial jurisdiction of this Court.

5. It was contended by Mr. Vakha-ria who appears for the respondents that in the case of A.K. Gopalan Vs. The State of Madras, the majority of the Judges held that Article 22 was self contained code and, therefore, a law of preventive detention did not have to satisfy the requirements of Articles 14, 19 and 21 of the Constitution and, therefore, it was not open to the Court to determine the question of validity of the law with reference to Article 19 of the Constitution which guarantees right to free movement and right to reside and settle in any part of the territory of India. Gopalan's case (supra) was considered by the Supreme Court in Rustom Cavasjee Cooper Vs. Union of India (UOI), and the view taken by the majority therein was disapproved. Even in respect of law of preventive detention provisions of Article 19(1)(d) and Clause (5) thereof have application. This is clearly stated by the Supreme Court in Sambhu Nath Sarkar Vs. The State of West Bengal and Others, . Therefore, Article 19 will be a relevant provision to consider the question of jurisdiction of this Court under Article 226(1A) of the Constitution.

6. It was next contended by Mr. Vakharia that the provisions of Article 19 of the Constitution have been suspended in view of the proclamation of emergency issued by the President under the provisions of Article 352 of the Constitution and, therefore, the provisions of Article 19 cannot be taken into consideration to determine whether this Court has jurisdiction to entertain the writ petitions under Article 226(1A) of the Constitution. Now Article 358 provides that while a proclamation of emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect. The provisions of Article 19 can be referred to for the purpose of determining the jurisdiction of this Court under Article 226(1A) of the Constitution, as the reference thereto is only incidental. The proclamation issued under Article 358 permits that legislation or an action can be taken in spite of Article 19 of the Constitution. We are not at present concerned with the merits of

orders of detention which is the executive action taken by the State, We are concerned only with the question of jurisdiction of the Court under Article 226(1A) of the Constitution. Because of the issue of proclamation under Article 358, the operation of Article 19 is suspended. Article does exist in the Constitution and can incidentally be relied upon for the purpose of indicating as to what is the jurisdiction of this Court under Article 226(1A) of the Constitution.

7. The allegations in the petitions are that the detenus were first detained in the Central Jail at Jaipur in pursuance of their orders of detention passed under the Maintenance of Internal Security Act, 1971 as amended by Ordinance of 1974. On the expiry of this Act their detention orders under the said Act came to an end and according to the respondents the detenus were taken out of the jail under heavy police escorts and were again brought inside the jail building where they were served with new detention orders dated December 19, 1974 under the impugned Act. Thus admittedly the detenus, it was contended, were not at all released as a consequence of the lapse of the orders of detention passed under the Maintenance of Internal Security Act, 1971, but their detention continued and they were served with fresh orders of detention under the impugned Act when they were not set at liberty. The detenus were first detained at Baroda under the orders of the detention passed under the Maintenance of Internal Security Act, 1971. Thus the initial detention of the detenus which was at Baroda continued under the fresh orders of detention issued under the provisions of the impugned Act. The place of initial arrest which was at Baroda, it was argued, thus provides a part of cause of action and that being so fl part of cause of action arose within the jurisdiction of this Court. It if also contended that the impugned orders of detention constitute an interference with all the rights guaranteed by Article 19(1) of the Constitution and in particular the rights guaranteed under Article 19(1) (d) and (e) of free movement within the territory of India and their rights to reside and settle in any part of India. On the theory of the cause of action as provided in Article 226(1A) of the Constitution every High Court in India has a jurisdiction to entertain a habeas corpus writ application.

8. Now it is clear from the facts of these cases that the detenus have their ordinary place of residence in this State. They were initially detained in the State and were then transferred to the Central Jail at Jaipur. These facts are undisputed. Their detention was continued under the fresh orders of detention issued under the provisions of the impugned Act. The detenus were not set at liberty on the expiry of the previous orders of detention passed under the Maintenance of Internal Security Act, 1971. Under their fresh orders of detention the detenus were kept in the Central Jail, Jaipur. Their initial detention at Baroda is continued. The effect of the impugned orders of detention is that the detenus are prevented to enter the State or to reside or to carry on their business therein. The aforesaid facts fur-nisih a part of cause of action within the territorial limits of this Court and this Court has, therefore, jurisdiction to entertain these writ petitions. It is true that the statement made in the affidavit of the respondents that separate entries relating to the detention of the detenus

in the jail register have been made to show that the detenus were taken afresh in the jail after service of fresh orders of detention under the impugned Act but that is not of much consequence in view of the fact that the detenus were not in fact set at liberty at any time before the fresh orders of detention were served on them. The detenus were not free agents when they were served with the fresh orders of detention under the impugned Act. In fact the detenus were not at all released after the expiry of the orders of their detention under the Maintenance of Internal Security Act, but they were continued in detention. As initial detention of detenus which was at Baroda is continued, the same furnishes a part of cause of action to the detenus which arises within the jurisdiction of this Court. Moreover the provisions of Article 19 Clauses (d) and (e) also indicate that this High Court has the jurisdiction to entertain these writ petitions under Article 226(1A) as a part of cause of action, namely, initial deprivation of liberty of the detenus took place within the territorial jurisdiction of this Court. It is thus clear that a part of cause of action thus arises within the jurisdiction of this Court, and therefore, both these writ petitions are maintainable. That being our conclusion we order that these writ petitions shall be heard along with other writ petitions for the determination of other challenges which are made in these petitions. Orders accordingly.