

(2012) 06 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 12058 of 2012 and M.P. No. 1 of 2012

Srilekha

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226, 32
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 5

Citation : (2012) 06 MAD CK 0058

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; M. Dig Vijaya Pandian, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The question arises for consideration in this writ petition is whether the petitioner's father's detention can be prevented from being detained

under the Tamil Nadu Act 14 of 1982 even before any detention order is issued by the second respondent Detaining Authority, i.e., District

Collector, Vellore ? The petitioner claims to be a medical graduate and is an house surgeon. It is her case that her father G.G. Ramesh was running

a lodge at Vellore known as M/s. Geethanjali Lodge. According to her, he is a disabled person. He is having continuous treatment in the CMC

Hospital, Vellore for over 20 years. He is sick and infirm. An attempt was made on his life by one Kuppan @ Sathish during March, 2011. As a

counter blast to the event, a criminal case was registered against the petitioner's father in Crime No. 295 of 2012. At present, he is enlarged on

bail with a condition to appear before the Vellore North Police Station. It was also stated that another FIR was registered in Crime No. 339 of

2012 as if he had attacked one Mohammed Sheriff and it is a false case. The petitioner's bail application is pending consideration before the

District Sessions Court at Vellore. The petitioner has reason to believe that the Inspector of Police, North Police Station, Vellore had sent a

proposal to detain the petitioner's father under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest

Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act (Tamil Nadu Act 14 of 1982) (for short

Goondas Act") and had sworn to an affidavit to that effect. According to the petitioner, even before the detaining authority can make up his mind,

he should be prevented from passing an order to detain the petitioner's father and such detention order if passed will be violative of Articles 21

and 22 of the Constitution.

2. Heard the arguments of Mr. R. Sankarasubbu, learned counsel for the petitioner and Mr. M. Dig Vijaya Pandian, learned Additional

Government Pleader.

3. When the matter came up for admission on 25.04.2012, this court directed the learned Additional Government Pleader to get instructions from

the respondents. Accordingly, when the matter came up on 27.04.2012, the learned Additional Government Pleader produced the original file

from the third respondent. This court had an occasion to peruse the same. At this stage, if the contents of the file are made known, the efforts of

the respondents from passing an appropriate order in accordance with law will become infructuous. It is suffice to state that the file contains

materials over which the second respondent detaining authority has to apply his mind before he passes an order under Tamil Nadu Act 14 of

1982.

4. However, Mr. R. Sankarasubbu, learned counsel for the petitioner strenuously contended that Article 21 is repository of personal liberty. An

order under the Tamil Nadu Act 14 of 1982 has to conform to the mandate of Article 22 of the Constitution. As to how a law on preventive

detention has to be construed came to be considered by the Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and Others, and in

paragraph 74 it was observed as follows:

74. Since Section 5 of the Act provides for, as shown by its marginal note, the power to regulate the place and conditions of detention, there is one

more observation which we would like to make and which we consider as of great importance in matters of preventive detention. In order that the

procedure attendant upon detentions should conform to the mandate of Article 21 in the matter of fairness, justness and reasonableness, we

consider it imperative that immediately after a person is taken in custody in pursuance of an order of detention, the members of his household,

preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has

been taken in custody. Intimation must also be given as to the place of detention, including the place where the detenu is transferred from time to

time. This Court has stated time and again that the person who is taken in custody does not forfeit, by reason of his arrest, all and every one of his

fundamental rights. It is, therefore, necessary to treat the detenu consistently with human dignity and civilized norms of behaviour.

5. In support of his contention, the counsel for the petitioner strongly relied upon a judgment of the Supreme Court in *Deepak Bajaj v. State of*

Maharashtra reported in (2008) 16 SCC 14. The Supreme Court has held that a detention order can be reviewed even at the pre-execution stage.

6. Even earlier the Supreme Court vide its decision in *Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia*

and *Another*, set out grounds upon which a detention order can be reviewed at the pre-execution stage. In paragraphs 30 to 32, the Supreme

Court had observed as follows :

30. As regards his last contention, viz., that to deny a right to the proposed detenu to challenge the order of detention and the grounds on which it is

made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of

the Constitution, we find that this argument is also not well merited based as it is on absolute assumptions. Firstly, as pointed out by the authorities

discussed above, there is a difference between the existence of power and its exercise. Neither the Constitution including the provisions of Article

22 thereof nor the Act in question places any restriction on the powers of the

High Court and this Court to review judicially the order of detention.

The powers under Articles 226 and 32 are wide, and are untrammelled by any external restrictions, and can reach any executive order resulting in

civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have

done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-

imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions

made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts

insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it

before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32

respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We

have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are

declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honoured

and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as

has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detenu is permitted to

challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made

will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the

courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they

have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have

interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i)

that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

31. Lastly, it is always open for the detenu or anyone on his behalf to challenge the detention order by way of habeas corpus petition on any of the grounds available to him. It is not, therefore, correct to say that no judicial review of the detention order is available. In the view we are taking which applies also to the cases under other laws, the stage at which the judicial review is made by the Court only stands deferred till after the order is executed. A ground on which a detention order is challenged which requires investigation and cannot be adjudicated without hearing the other side and without proper material, has necessarily to await decision till the final hearing. In such cases the operation of the order of detention by its very nature cannot be stayed pending the final outcome. The only proper course in such cases is to hear the petition as expeditiously as possible.

32. This still leaves open the question as to whether the detenu is entitled to the order of detention prior to its execution at least to verify whether it can be challenged at its pre-execution stage on the limited grounds available. In view of the discussion aforesaid, the answer to this question has to be firmly in the negative for various reasons. In the first instance, as stated earlier, the Constitution and the valid law made thereunder do not make any provision for the same. On the other hand, they permit the arrest and detention of a person without furnishing to the detenu the order and the grounds thereof in advance. Secondly, when the order and the grounds are served and the detenu is in a position to make out prima facie the limited grounds on which they can be successfully challenged, the courts, as pointed out earlier, have power even to grant bail to the detenu pending the final hearing of his petition.

Alternatively, as stated earlier, the Court can and does hear such petition expeditiously to give the necessary relief to the detenu. Thirdly, in the rare cases where the detenu, before being served with them, learns of the detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The Court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it. It will, however, depend on the facts of each case. The decisions and the orders cited above show that in some genuine cases, the courts have exercised their powers at the pre-execution stage, though such cases have been rare. This only emphasises the fact that the courts have power to interfere with the detention orders even at the pre-execution stage but they are not obliged to do so nor will it be proper for them to do so save in exceptional cases. Much less can a detenu claim such exercise of power as a matter of right. The discretion is of the Court and it has to be exercised judicially on well settled principles.

(Emphasis added)

7. The decision in Alka Subhash Gadia (Smt)'s case (cited supra) came to be considered by the Supreme Court in Deepak Bajaj's case (cited supra), wherein the Supreme Court held that the ground under which a review can be made as set out in Alka Subhash Gadia (Smt)'s case is not exhaustive and it is only illustrative. In paragraphs 6 and 18 of Deepak Bajaj case, the Supreme Court had observed as follows :

6. We have carefully perused the above observations in Alka Subhash Gadia case² and we are of the opinion that the five grounds mentioned therein on which the court can set aside the detention order at the pre-execution stage are only illustrative, not exhaustive.

18. Apart from the above, in our opinion non-placement of the relevant materials before the detaining authority vitiates the detention order, and Grounds (iii) and (iv) of the decision of this Court in Alka Subhash Gadia case² are attracted in such a situation as held in Rajinder Arora v. Union of India³ (vide SCC para 25 of the said decision). Hence, even if we treat the five exceptions mentioned in Alka Subhash Gadia case² as

exhaustive, the present case is covered by the third and fourth exceptions of those five exceptions, as held in Rajinder Arora case³.

8. Notwithstanding the decisions referred to above empowering this court from reviewing the detention order, in the present case, it is only at the

stage of a proposal being sent by the third respondent. The ultimate satisfaction is that of the detaining authority, i.e., District Collector, Vellore.

Unless and until he applies his mind with all relevant facts and materials placed before him and passes an order, the court cannot at this stage

forestall any decision being taken by the second respondent on the basis of unsubstantiated averments made by the petitioner. It is only when the

detaining authority is satisfied that an order can be made under Tamil Nadu Act 14 of 1982 and unless such an order is produced, the question of

going into the validity of the detention order will not arise.

9. The decisions cited by the petitioner in support of his contentions do not envisage the case where even before the detaining authority takes a

decision, the court can go into the sufficiency or otherwise of the material. In fact, in both the cases the Supreme Court had before it the copies of

orders of detention passed by the authorities were made available and thus a review was done before their execution. In view of the above, there is

no case made out to entertain the writ petition filed by the petitioner. Hence the writ petition will stand dismissed. No costs. Consequently

connected miscellaneous petition stands closed.