

(1965) 09 SC CK 0006
In the Supreme Court Of India
Case No : ?Appeal (crl.) 107 of 1965

State of Maharashtra

APPELLANT

Vs

Prabhakar Pandurang Sangzgiri and Another

RESPONDENT

Date of Decision : 06-09-1965

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 21, 22, 226
Defence of India Act, 1962 — Section 3, 30, 44
Defence of India Rules, 1962 — Rule 17, 30(1), 30(4)

Citation : AIR 1966 SC 424 : (1966) CriLJ 311 : (1966) MhLj 141 : (1966) MPLJ 165 : (1966) 1 SCR 702

Hon'ble Judges : V. Ramaswami, J;S. M. Sikri, J;K. Subba Rao, J;K. N. Wanchoo, J;J. C. Shah, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Subba Rao, J

1. Prabhakar Pandurang Sanzgiri, who has been detained by the Government of Maharashtra under s. 30 [1] [b] of the Defence of India Rules, 1962, in the Bombay District Prison in order to prevent him from acting in a manner prejudicial to the defence of India, public safety and maintenance of public order, has written, with the permission of the said Government, a book in Marathi under the title "Anucha Antaragaat" [Inside the Atom]. The learned Judges of the High Court, who had gone throughout the table of contents of the book expressed their opinion on the book thus:

"..... we are satisfied that the manuscript book deals with the theory of elementary particles in an objective way. The manuscript does not purport to be a research work but it purports to be a book written with a view to educated the people and disseminate knowledge regarding quantum theory."

2. The book is, therefore, purely of scientific interest and it cannot possibly cause any prejudice to the defence of India, public safety or maintenance of public

order. In September, 1964, the detenu applied to the Government of Maharashtra seeking permission to send the manuscript out of the jail for publication; but the Government by its letter, dated March 27, 1965, rejected the request. He again applied to the Superintendent, Arthur Road Prison, for permission to send the manuscript out and that too was rejected. Thereafter, he filed a petition under Art. 226 of the Constitution in the High Court of Maharashtra at Bombay for directing the State of Maharashtra to permit him to send out the manuscript of the book written by him for its eventual publication. The Government of Maharashtra in the counter-affidavit did not allege that the publication of the said book would be prejudicial to the objects of the Defence of India Act, but averred that the Government was not required by law to permit the detenu to publish books while in detention. The High Court of Bombay held that the civil rights and liberties of a citizen were in no way curbed by the order of detention and that it was always open to the detenu to carry on his activities within the conditions governing his detention. It further held that there were no rules prohibiting a detenu from sending a book outside the jail with a view to get it published. In that view the High Court directed the Government to allow the manuscript book to be sent by the detenu to his wife for its eventual publication. The State of Maharashtra has preferred the present appeal against the said order of the High Court.

3. The contentions of the learned Additional solicitor General may be briefly states thus: When a person is detained he loses his freedom; he is no longer a free man and, therefore, he can exercise only such privileges as are conferred on him by the order of detention. The Bombay Condition of detention order 1951. which regulates the terms of the first respondent detention, does not confer on him any privilege or right to write a book and send it out of the person for publication. In support of his contention he relied upon the observations of Das. J. as he then was, in *A. K. Gopalan v. State of Madras* Wherein the learned judge has expressed the view, in the context of fundamental rights, that if a citizen loses the freedom of his person by reason of a lawful detention, he cannot claim the rights under Arts under Art. 19 of the Constitution as the rights enshrined in the said article are only the attributes of a free man.

4. Mr. Garg, learned counsel for the detenu, raised before us the following two points : [1] a restriction of the nature imposed by the Government on the detenu can only be made by an order issued by the appropriate Government under cls. [f] and [h] of sub-r. [1] of r. 30 of the Defence of India Rules. 1962, hereinafter called the Rules, and that too in strict compliance with s. 44 of the Defence of India Act, 1962, hereinafter called the Act, and that as the impugned restriction was neither made by such an order nor did it comply with s. 44 of the Act, it was an illegal restriction on his personal liberty; and [2] neither the detention order nor the conditions of detention which governed the first respondent's detention enabled the Government to prevent the said respondent from sending his manuscript book out of the prison for publication and, therefore, the order of the Government rejecting the said respondent's request in that regard was illegal.

5. Article 358 of the Constitution suspends the provisions of Art. 19 of the Part III of the Constitution during the period the proclamation of emergency is in operation; and the order passed by the President under Art. 359 suspended the enforcement, inter alia, of Art. 21 during the period of the said emergency. But the President's order was a conditional one. In effect it said that the right to move the High Court or the Supreme Court remained suspended if such a person had been deprived of his personal liberty under the Defence of India Act, 1962, or any rule or order made thereunder. If a person was deprived of his personal liberty not under the Act or a rule or order made thereunder but in contravention thereof, his right to move the said Courts in that regard would not be suspended. The question, therefore, in this case is whether the first respondent's liberty has been restricted in terms of the Defence of India Rules whereunder he was detained. If it was in contravention of the said Rules, he would have the right to approach the High Court under Art. 226 of the Constitution.

6. In exercise of the power conferred on the Central Government by s. 3 of the Act, the Central Government made the Defence of India Rules. Under s. 30 of the Rules the Central Government or the State Government, if it is satisfied with respect to any person that in order to prevent him from acting in any manner prejudicial to the matters mentioned therein, it is necessary so to do, may make an order directing that he be detained. Under sub-r. 4 thereof he shall be liable to be detained in such place and under such conditions as to maintenance, discipline and the punishment of the offence and the breaches of discipline as the Central Government or the State Government, as the case may be, may from time to time determine. In exercise of the power conferred under sub-r. (4) of r. 30 of the Rules, the Government of Maharashtra determined that the conditions as to maintenance, discipline and the punishment of offences and breaches of discipline governing persons ordered to be detained in any place in the State of Maharashtra, shall be the same as those contained in the Bombay Conditions of Detention Order, 1951. The Bombay Conditions of Detention Order, 1951, does not contain any condition as regards the writing of books by a detenu or sending them out of jail for publication. Briefly stated, the scheme of the said provisions is that a person can be detained if the appropriate Government is satisfied that in order to prevent him from doing the prejudicial acts mentioned in r. 30 of the Rules it is necessary to detain him in prison subject to the conditions imposed in the manner prescribed in sub-r. (4) of r. 30 of the Rules. To put it in a negative form, no restrictions other than those prescribed under sub-r. (4) of r. 30 can be imposed on a detenu. If the appropriate authority seeks to impose on a detenu a restriction not so prescribed, the said authority will be interfering with the personal liberty of the detenu in derogation of the law whereunder he is detained. If that happens, the High Court, in terms of Art. 226 of the Constitution, can issue an appropriate writ or direction to the authority concerned to act in accordance with law.

7. We have gone through the provisions of the Bombay Conditions of Detention Order, 1951. There is no provision in that order dealing with the writing or

publication of books by a detenu. There is, therefore, no restriction on the detenu in respect of that activity. Sub rule [iii] of r. 17 of the said order reads:

"All letters to and from security prisoners shall be censored by the Commissioner or the Superintendent, as the case may be. If in the opinion of the Commissioner or the Superintendent, the dispatch^{7:13 AM 12/6/2007} or delivery of any letter is likely to be detrimental to the public interest or safety or the discipline of the place of detention, he shall either withhold such letter, or dispatch or deliver it after deleting any objectionable portion therefrom. In respect of the censoring of letters of security prisoners, the Commissioner or the Superintendent shall comply with any general or special instructions issued by Government."

8. The Maharashtra Government has not relied upon this rule. In deed, in the counter affidavit its case was not that it prohibited the sending of the book for publication under the said sub-rule, but that it was not required bylaw to permit the detenu to publish books while in detention; nor was it its case before the High Court that the publication of this book was detrimental to public interest or safety or the discipline of the place of detention. Prima facie the said sub rule applies only to letters to and from security prisoners and does not regulate the sending out of prison books for publication. Indeed, the learned Additional Solicitor General does not rely upon this provision.

9. Let us now consider the validity of the argument of the learned Additional Solicitor General. He relies upon the following observations of Das, J. as he then was, in A. K. Gopalan's case([1950] S.C.R. 88), at p. 291.

"If a man's person is free, it is then and then only that he can exercise a variety of other auxiliary rights, that is to say, he can, within certain limits, speak what he likes, assemble where he likes, form any associations or unions, move about freely as his own inclination may direct, reside and settle any where he likes and practice any profession or carry on any occupation, trade or business. These are attributes of the freedom of the person and are consequently attached to the person."

10. Relying upon these observations it is argued that freedom to publish is only a component part of that of speech and expression and that in the light of the said observations, as the detenu ceased" to be free in view of his detention, he cannot exercise his freedom to publish his book. In other words, as he is no longer a free man, his right to publish his book, which is only an attribute of personal liberty, is lost. The principle accepted by Das, J., as he then was, does not appear to be the basis of the conclusion arrived at by the other learned Judges who agreed with his conclusion. Different reasons are given by the learned Judges for arriving at the same conclusion. As has been pointed out by this Court in the second Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, , the views of the learned Judges may be broadly summarized under the following heads: f 1) to invoke Art. 19(1) of the Constitution, a law shall be made directly infringing that right; (2) Arts. 21 and

22 constitute a self-contained code; and (3) the freedoms in Art. 19 postulate a free man. Therefore, it cannot be said that the said principle was accepted by all the learned Judges who took part in A. K. Gopalan's case¹). The apart, there are five distinct lines of thought in the matter of reconciling Art. 21 with Art. 19, namely, (1) if one loses his freedom by detention, he loses all the other attributes of freedom enshrined in Art. 19(2) personal liberty in Art. 21 is the residue of personal liberty after excluding the attributes of that liberty embodied in Art. 19(3) the personal liberty included in Art. 21 is wide enough to include some or all of the freedoms mentioned in Art. 19, but they are two distinct fundamental rights - a law to be valid shall not infringe both the rights; (4) the expression "law" in Art. 21 means a valid law and, therefore,, even if a person's liberty is deprived by law of detention, the said law shall not infringe Art. 19 and (5) Art. 21 applies to procedural law, whereas Art. 19 to substantive law relating to personal liberty. We do not propose to pursue the matter further or to express our opinion one way or other. We have only mentioned the said views to show that the view expressed by Das, J., as he then was, in A.K. Gopalan Vs. The State of Madras, is not the last word on the subject.

11. In this case, as we have said earlier, we are only concerned with the question whether the restriction imposed on the personal liberty of the first respondent is in terms of the relevant provisions of the Defence of India Rules. Here, the first respondent's liberty is restricted under the Defence of India Rules subject to conditions determined in the manner prescribed in Sub-r. (4) of r. 30 thereof. We find it difficult to accept the argument that the Bombay Conditions of Detention Order, 1951, which lays down the conditions regulating the restrictions on the liberty of a detenu, conferred only certain privileges on the detenu. If this argument were to be accepted, it would mean that the detenu could be starved to death, if there was no condition providing for giving food to the detenu. In the matter of liberty of a subject such a construction shall not be given to the said rules and regulations, unless for compelling reasons. We, therefore, hold that the said conditions regulating the restrictions on the personal liberty of a detenu are not privileges conferred on him, but are the conditions subject to which his liberty can be restricted. As there is no condition in the Bombay Conditions of Detention Order, 1951, prohibiting a detenu from writing a book or sending it for publication, the State of Maharashtra infringed the personal liberty of the first respondent in derogation of the law whereunder he is detained.

12. The Appellant, therefore, acted contrary to law in refusing to send the manuscript book of the detenu out of the jail to his wife for eventual publication.

13. In the view we have taken, another argument advanced by Mr. Garg, namely, that the restriction can only be imposed by an order made under s. 30 [f] or [h] of the Rules and that too in strict compliance with s. 44 of the Act need not be considered. That question may arise if and when an appropriate condition is imposed restricting the liberty of a detenu in the matter of sending his books for publication. We do not express our view on this question one way or other.

14. In the result, the order passed by the High Court is correct. The appeal fails and is dismissed.