
(1988) 09 DEL CK 0041

In the Delhi High Court

Subas Das

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-09-1988

Acts Referred:

Citation : (1988) 36 DLT 360 : (1989) 16 DRJ 202 : (1988) 19 ECR 436

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : Rohit Kochhar, Harjinder Singh, S.K. Mishra and S.K. Dubey, for the Appellant;

Final Decision : Allowed

Judgement

D.P. Wadhwa, J.—By this petition the petitioner seeks to challenge his detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act").

2. In pursuance of an order dated 19-10-1987 issued by the Joint Secretary of the Government of India u/s 3(1) of the Act on his satisfaction that it was necessary to detain the petitioner with a view to preventing him from engaging in transporting smuggled goods, the petitioner was detained on 3-11-1987. He was communicated the grounds on which the order of detention was made as required under Subsection (3) of Section 3 of the Act. Reference was made to the Advisory Board as constituted u/s 8 of the Act. The Advisory Board was of the opinion that there was sufficient cause for the detention of the petitioner.

3. The grounds of detention, which are in the narrative form, may briefly be set out. The officers of the Directorate of Revenue Intelligence (DRI) and the Calcutta Customs had certain information that three trucks carrying contraband goods like synthetic yarn etc. smuggled from Nepal would proceed to Delhi from North Bengal area passing through Dalkhola Checkpost on 1-4-1987 and that the contraband would be concealed under commodities like ginger, broom sticks, etc. Surveillance was, therefore, kept. On the morning of 1-4-1987 three suspected

trucks were found awaiting clearance at the Dalkhola Checkpost. During the course of the watch on the trucks, the officers of the Dri and the Customs Department spotted an ambassador car bearing registration No. Wzx 6261 which was believed to be following the suspected trucks. When the officers tried, to intercept the car, it attempted to swerve for tracing back but the officers were able to intercept the car. The petitioner and one more person, namely, As his Nandy, were found in the car which was being driven by Manjit Singh. Inquiries revealed that the petitioner was escorting the subject trucks for safe clearance through various check posts. One truck was found to contain contraband goods valuing over Rs. 8.30 lakhs, and second truck of the value of over Rs. 12 lakhs and the third truck contained contraband goods of the value of over Rs. 10.96 lakhs. It is not necessary to state further facts except to note that the detention orders under the Act were clamped on the petitioner. As his Nandy and Manjit Singh. In the case of Manjit Singh, it is stated that the Advisory Board opined that there was no sufficient cause for his detention. As his Nandy could not be detained as it was stated that he was absconding. It is also not necessary to refer to the proceedings for grant of bail by the court of the Metropolitan Magistrate, Calcutta, and the adjudication and prosecution proceedings pending against the petitioner and others.

4. On 14-12-1987 the petitioner filed his representation, in Bengali, before the detaining authority complaining that he was not supplied with copies of various documents and that some of the copies were illegible and he prayed that all the documents be supplied to him. He also represented Before the Advisory Board which met on 8-1-1988. On 18-1-1988 the representation of the petitioner to the detaining authority was rejected. Nothing was said about the documents which had earlier been supplied to the petitioner and which were illegible as complained by him. By order dated 25-1-1988, detention of the petitioner was confirmed for a period of one year and this fact was communicated to the petitioner on 2-2-1988.

5. On this petition being filed, notice was issued to the respondents to show cause as to why Rule Nisi be not issued. There are three respondents. Respondent No.1 is the Central Government ; respondent No. 2 is the Joint Secretary under whose orders the petitioner was detained and the third respondent is the superintendent ,Presidency Jail, Calcutta. Respondent Nos. 1 and 2 filed their answer to show cause notice.

6. Mr. Kochhar, learned counsel for the petitioner, submitted that he had various contentions to raise, to show that the detention of the petitioner was not legal. He said constitutional safeguards as provided under Article 22(5) of the Constitution had been violated inasmuch as illegible copies of the grounds of detention and the documents were given to the petitioner and in spite of his request legible copies were not supplied till date. Mr. Kochhar also said that the petitioner was not supplied with all the copies of documents in a language which was understood by him which language, he said, was Bengali. Then, he said that

there was non-application of mind on the part of the detaining authority inasmuch as at best the detention of the petitioner could be with a view to preventing him from abetting the Smuggling of goods and that it could not be said that the petitioner was engaging in transporting smuggled goods. Lastly, Mr. Kochhar said that there was unexplained delay in considering the representation of the petitioner which made his detention void.

7. I do not think it is necessary for me to consider all the contentions raised in this petition as I am satisfied that the petition must succeed on the first contention itself. In para 2 of the petition, the petitioner has given number of as many as 35 pages from the grounds of detention and the documents accompanying the grounds which, according to him, though supplied to him were not legible. In the counter-affidavit of the respondents, there is bare denial to this averment. I have examined these documents myself and most of them are certainly not legible. Under Article 22(5) of the Constitution where a person is detained the authority making the order of detention shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. The constitutional provisions and the provisions of Section 3(3) of the Act are imperatives and are two-fold: (a) the detaining authority must communicate to the detenu grounds of detention within 5 or 15 days, as the case may be, from the date of detention; and (b) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. In *Khudiram Das Vs. The State of West Bengal and Others*, the Supreme Court held that these were the barest minimum safeguards which must be observed before an executive authority could be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security. That was a case under the Maintenance of Internal Security Act, 1971. The Supreme Court in *Narendra Purshotam Umrao Vs. B.B. Gujral and Others*, observed that when the liberty of the subject was involved, whether it was under the Preventive Detention Act or the Maintenance of Internal Security Act or the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act or any other law providing for preventive detention, it was the bounden duty of the court to satisfy itself that all the safeguards provided by law had been scrupulously observed and that the subject was not deprived of his personal liberty otherwise than in accordance with law. "The history of liberty has largely been the history of observance of procedural safeguards", is Mr. Justice Frankfurter's memorable aphorism in *Benjamin McNabb, Freeman McNabb and Raymond McNabb v. United States of America* 318 U.S. 332. This dictum has been quoted with approval by the Supreme Court in a number of cases. Where, therefore, the order of detention does not meet the requirements of Article 22(5) of the Constitution, it has to be struck down. In *Smt. Ichhu Devi Choraria Vs. Union of India (UOI) and Others*, the Supreme Court held that the grounds of detention in their entirety must be furnished to the detenu within the period prescribed and if there were any documents,

statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they formed part of the grounds and the grounds furnished to detenu could not be said to be complete without them. The court further held that it could not, Therefore, be sufficient to communicate to the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time. If this requirement of article 22(5) of the Constitution read with Sub-section (3) of Section 3 of the Act was not satisfied, the detention would be illegal and void. Thus, it would be seen that service of grounds of detention is complete only when the grounds of detention are accompanied by documents forming the basis of the. order of detention. In *Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others*, , the Supreme Court observed that there was an inexorable connection between the obligation on the part of the detaining authority to furnish the grounds and the right given to the detenu to have an earliest opportunity to make the representation. Preventive detention is a serious in road on individual liberty and the detaining authority must be satisfied as to the sufficiency of the grounds which justify the taking of the drastic measure of preventive detention. The requirements of Article 22(5) are satisfied once "basic facts and materials" which weighed with the detaining authority in reaching his subjective satisfaction arc communicated to the detenu.

8. As noted above, quite a number of documents supplied to the petitioner along with the grounds of detention are not legible. In .spite of his representation that he be supplied with legible copies of the documents, no such action was taken and in the meanwhile, after receiving report from the Advisory Board, the detention of the petitioner was confirmed. It appears not much thought was given at the time when the documents were supplied to the petitioner if these were legible. Documents which were supplied to the petitioner were photo-copies. Nobody appears to have checked if the photo-copies had correctly come out and if these were readable. Merely supplying number of pages to the. petitioner with reference to the index of documents relied upon will not meet the requirement of law. Due care and precaution had to be taken to supply legible copies of documents as these documents formed part of the grounds of detention. Since the basic requirement of law was missing and the petitioner was deprived of his right to make effective representation against his detention, his. detention, Therefore, became illegal. It is not for the court to examine the relevancy of the documents accompanying the grounds when the detaining authority itself relied upon those documents and they formed the basic material for the detaining authority to come to the conclusion that it was necessary to detain the petitioner. Even otherwise, when the documents are illegible, the court can- not examine their relevancy. An argument was raised that grounds of detention were severable and that detention could not be held to be void if some of the documents were not legible. Reliance was placed on the provisions of

Section 5A of the Act. Under this section where a person has been detained in pursuance of an order of detention under Sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and the order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, no relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever. It is not necessary to set out this section fall. as it appears to me that when detention of the petitioner itself is void being vocative of constitutional safeguards as provided under Article 22(5) of the-Constitution, Section 5A of the Act cannot come to the help of the respondents. Section 5A cannot be an exception to Article 22(5) of the Constitution. Supply of illegible documents would, in fact, amount to non empty of copies of the relevant documents forming part of the grounds of detention. It would thus mean that the detenu has not been communicated the grounds on which the order of detention .has been made and he has been deprived of the opportunity to make representation against the order. This makes for detention invalid. Further question of the grounds of detention being severable does not arise. In the circumstances, Therefore, the order of detention in the case of the petitioner has to be set aside. It is unfortunate that in the case of the nature before me such should be the result but then, as noted above, due care and attention has not been given to follow the procedure prescribed by law.

9. Rule is, therefore, made absolute. The petitioner should be set at liberty forthwith, unless, of course, he is required to be detained in any other matter.