
(1996) 04 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1024 of 1996

Sukanti Gochhayat

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

National Security Act, 1980 — Section 14, 14(1), 3(5)

Citation : (1996) 2 OLR 275

Hon'ble Judges : S. Chatterji, Acting C.J.; P.K. Mohanty, J

Bench : Division Bench

Advocate : Biswajit Mohanty, for the Appellant; N. Prusty, Additional Government Advocate and A.B. Mishra, Sr. Stand. Counsel (Union), for the Respondent

Judgement

S. Chatterji, Acting C.J.

1. The present petition for a writ of habeas corpus at the instance of one Sukanti Gochhayat challenges the impugned order for the alleged detention of her husband dated 16-9-1995 passed by opp. party No. 3, District Magistrate, Puri.

2. It is stated that one Subash Chandra Gochhayat has been detained u/s 3(2) of the National Security Act, 1980 and the ground of detention was served on the husband of the petitioner on 19-9-1995. The State Government has confirmed the order on 10-11-1995. The copy of the documents dated 17-9-1995 containing the grounds of detention and the order of confirmation dated 10-11-1995 have been served on him. The petitioner in this connection has mainly challenged that the order of detention suffers from various infirmities and the continued detention is bad in law."

3. The writ petition is opposed by the opp. parties by filing affidavits by the State Government as well as by the Collector, Puri. The allegations of the petitioner have been controverted.

4. The learned lawyer appearing for the petitioner has mainly argued before us

that the order of detention as well as the continued detention cannot be sustained in law.

First he submits that the detenu is not conversant with English language and excepting the grounds of detention, all connected papers were supplied to him and those are not legible and mostly in English. In support of his contention he has relied upon a decision reported in *Harikisan Vs. The State of Maharashtra and Others*, . There, the Supreme Court found that the detenu did not know enough English to understand the grounds served upon him in order to be able effectively to make his representation against the order of detention. Ultimately, it was held that there was not sufficient compliance In this case with the requirements of the Constitution as laid down in Column (5) of Article 22 and consequently the order of detention was quashed. It was observed in the said case that in the case of a person detained by an order u/s 3(1)(a)(ii) of the Preventive Detention Act, 1950, communication of the grounds of detention in English, so long as it continues to be the official language of the State, is not necessarily enough compliance with the requirements of Article 22(5) of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand and in a script which he can read, if he is a literate person.

Secondly, it is argued before us that there is substantive delay in disposal of the representation by the State Government inasmuch as the representation dated 22-9-1995 was disposed of and communicated on 10-10-1995. There is inordinate delay of eighteen days which is obviously fatal to sustain the order of continued detention.

Thirdly, it is argued that the communication made by the State Government to the Central Government as envisaged u/s 14 of the National Security Act remains in cold storage. Neither the Central Government has been moved nor communicated nor the State Government is aware of the consequences as to the report made by the State Government and the response made by the Central Government. This aspect also vitiates the continued detention.

5. He has further argued that the past events and the grounds of detention do not afford public order and at best these can be described as a problem of law and order but the grounds themselves do not warrant any preventive detention.

6. Lastly it is argued that regard being had to the past events, there is no proximate to the ultimate action as to detention. On all these points, the learned counsel has highlighted that the detention cannot be continued and the petitioner's husband is otherwise entitled relief as prayed.

7. Mr. N. Prusty, the learned Addl. Government Advocate has placed on record

both the affidavits sworn on behalf of State Government as well as the Collector, Puri. It is submitted that ad the papers including the grounds of appeal have been supplied to the detenu both in English as well as in vernacular. There is a translated copy of the order of detention as well as the grounds of detention in vernacular it is submitted that there is not delay in disposal of the representation and he has drawn the attention of the Court to the averments made in the affidavit by the Collector as well as by the State Government that the representation made on 22-9-19 5 was considered promptly and the day to day movement of the file was disclosed and ultimately the order was made on 30-9-1995 and communicated by order dated 5-10-1995 as there was intervening holidays in the office on account of Puja vacation. With regard to the grounds of detention he has submitted that these effect the public order and the detaining authority-applied its mind fully and taking notice of all the materials on record has passed the order of detention and there is neither any infirmity nor any irregularity necessitating any interference by the writ Court.

8. Mr. Prusty, however, has submitted that the communication made by the State Government to the Central Government within seven days in terms of Section 14 of the Act remains unattended and there is no response from the Central Government till date.

9. "Mr, A. B. Mishra, the learned Senior Standing Counsel for the Central Government, has submitted that no copies of the affidavits filed on behalf of the State Government or by the Collector have been served on him. But without entering into any controversy or technicality, it is submitted that the detenu has no grievance against the Central Government, nor the detenu has made any representation and Section 14 does not provide any specific time-limit and if the Parliament in its wisdom has not provided any time-limit, there is no obligation on the part of the Central Government and at best if there is no communication, it should be construed and/or to be deemed as being rejected because there is no modification or revocation of the order of detention.

10. Patiently, we have heard the learned counsel for the detenu, for the State and for the Central Government and we have noted the respective grounds of challenge to the order of detention and the continued detention. Our attention has been drawn to several decisions from Bar in support of the contentions of various points. Regarding the supply of legible copies of the grounds of detention as well as the connected papers, it must be appreciated that there must be supply of all relevant documents to enable the detenu to make an effective representation. The papers were produced before us and on perusal of the materials on record and in particular the translated copies of both the order of detention as well as the grounds of detention and other connected papers, we are of the view that the interest of the detenu has not been prejudiced and this point raised on behalf of the detenu that for non-supply of these papers there is anything vital is not sustained.

11. With regard to the point of delay, our attention has been drawn to a decision

reported in JT 1996 (2) 532 (Kundanbhai Dulabhai Shaikh v. District Magistrate. Ahmedabad and Ors.). In a petition under Article 32 of the Constitution of India, the Supreme Court considered as to the delay in disposal of the representation as regards preventive detention under Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. It has been held representation against detention and there is no mention in Article 22(5) as to whom the representation is to be made. Whether, in view of this, the right of detenu of making a representation to the appropriate Government would be treated as a constitutional right The right to make a representation against the detention order flows from the constitutional guarantee enshrined in Article 22(5) and by considering the facts of the said case it was found out that the delay over 23 days. was found to be fatal and the writ petitions were allowed.

12. In this regard, we find in another decision reported in Smt. Panna Waringe Vs. A.S. Samra and others, where the detention order under the National Security Act was considered and on fact of case it could not be said that there was delay in issuing detention order nor the detaining authority proceeded contrary to law. In this case, the apex Court has considered that if properly explained the delay cannot be held to be fatal inasmuch as in the factual backdrop it was observed that the State Government on receipt of the wireless message on 2-5-1992 forwarded the necessary information by wireless message and the matter was placed before the Joint-Secretary, Ministry of Home Affairs and thereafter to the Special Secretary and ultimately to the Home Minister and stage by stage the course of events were considered and ultimately it was found that there was no delay. True it is that in a case of detention the ratio of a precedent would only be appreciated if tested on the peculiar facts and circumstances of each case. It is well laid down by the apex Court and several High Courts that there cannot be any straight jacket formula by which the delay has got to be explained, or delay can be ignored. Every case has its own peculiar features. If the delay is not properly explained, certainly the detention cannot continue contrary to constitutional guarantee.

In this case regard being had to the materials on record, we are of the view that the delay has sufficiently been explained and the petitioner cannot avail this point also.

13. Regarding the incident, whether it is a law and order problem or public order problem, our attention has been drawn to a decision of this Court reported in (1994) 78 CLT 218 (Sankarsan Pradhan and Babu alias Bishnu Mohanty alias Bishu Charan Mohanty v. State of Orissa and Anr.). In this Judgment, the Division Bench of this Court has referred to a large number of Supreme Court decisions and decisions of other High Courts and considered the scope as to holding of "public order" and "law and order" problem. In this case, by relying upon the ratio of the said Judgment the learned lawyer for the petitioner has strongly argued that the nature of the allegations and order of detention and past history do not constitute the ingredients of public order and the preventive detention is

otherwise bad in law. We have considered this aspect of the matter. We find the ratio of the said Judgment for determination as to whether the disturbance or disorder amounts to breach of law and order problem or public order problem. The following factors are required to be borne in mind :

(1) The contravention of law always effects order, but before it can be said to affect the public order, it must affect the community or the public at large.

(2) Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality.

(3) It is the degree of disturbance and its effect on the life of the community in a locality which determine whether that disturbance amounts to breach of law and order or public order.

(4) An act by itself is not determinant of its own gravity. In its quality, it may not differ from another, but in potentiality it may be very different.

(5) Whether a man has committed breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act on the society.

(6) Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed.

(7) It is well-established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life.

(8) Whether disturbance or disorder has led to breach of law and public order is a question of fact, in which case there is no formula by which one case can be distinguished from another.

14. All these aspects are not in doubt or in dispute. To resolve the dispute, it is construed that each and every fact of a case has to be considered in its proper perspective. In the present day scenario, it has to be borne in mind that there is distinction of a punitive action and preventive detention. If from the chain of past acts it has to be subjectively held by the detaining authority that for preventing such acts, detention is necessary, law comes forward and it has to be decided by several aspects whether the order of detention is bad or the continued detention is bad. Applying these tests of law and looking at the facts of the present case, we are convinced that there is no irregularity in the order of detention. We do not find that the order of detention itself is wrong on the points as argued on behalf of the petitioner.

15. Lastly, we find a strong point has been raised on behalf of the detenu as regards the inaction on the part of the Central Government. The petitioner has

stated that the State Government in their affidavit has unequivocally admitted that the matter has been reported to the Central Government and it has been left in the cold storage. Nothing has been disclosed thereafter. Although we have taken note of the argument of Mr. Prusty, learned Addl. Government Advocate and Mr. A. B. Mishra, learned Senior Standing Counsel for Central Government, we are of the view that Section 14 of the Act has its own part to play. The entire scheme of the National Security Act has got to be appreciated.

16. Our attention has been drawn to a decision reported in *Hitendra Nath Goswami Vs. State of Assam and Others*, . There the scope of Section 14(1) and Section 3(5) of the National Security Act was considered. Report had been submitted to the Central Government for consideration of the question of revocation by it. It was found that the discretionary power of the Central Government u/s 14(1) in the context of Section 3(5) is coupled with duty to consider the report received from the State Government with reasonable expedition, notwithstanding that no representation/petition has been made by the detenu to the Central Government; what is reasonable expedition depends on the circumstances of the particular case and in case of breach of such procedural safeguard, the detention order is liable to be set aside and the detenu set at liberty.

17. We find that this view is acceptable inasmuch as by Section 14(1). the Central Government cannot remain as a spectator. Although no time limit has been mentioned in Section 14 as pointed out by Mr. A. B. Mishra, we do not appreciate that in the context of reasonableness and within the scope of understanding the language of Article 22(5) of the Constitution of India, a detenu can be kept under detention and either the State Government or the Central Government would not perform their part ignoring the liberty of an individual which is an essence of the Constitution. We cannot appreciate nor we can persuade our judicial conscience that in the instant case the action of the Central Government can be appreciated. It is admitted by the State Government that the State Government reported the matter to the Central Government and for months together it remains unattended. No affidavit has been filed by the Central Government nor we have been given to understand what has been done in this regard. Although we find that the order of detention is not bad but the continued detention cannot be sustained.

For the foregoing reasons, we allow this writ petition on this point alone, quash the continued detention and direct the detenu to be set at liberty forthwith, if he is not wanted in any other casa.

P.K. Mohanty, J.

I agree.