

(1985) 10 GUJ CK 0002
In the Gujarat High Court

Suleman Isa

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-10-1985

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 3(1)
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 22(5), 22(5)

Citation : (1986) 1 GLR 529

Hon'ble Judges : S.B. Majmudar, J; R.J. Shah, J

Bench : Division Bench

Judgement

R.J. Shah, J.—This is a group of applications wherein separate but similar orders all dated 19th September 1984 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act, for short) have been challenged by the petitioners. All the petitions arise out of the same facts. All the petitioners are represented by same counsel. With the consent of parties, in the aforesaid circumstances, all the petitions have been heard together and are being disposed of by this common judgment.

2. A few facts necessary for the purpose of this judgment need to be stated. Some information was received by the Customs Officer of the Diamond Harbour Preventive Unit, Diamond Harbour, 24 Perganas to the effect that some contraband goods were likely to be carried in some vehicles coming from Kakdwip, a place 30 kms. South of Kulpi "More", towards Calcutta. Pursuant to the same, the said cargo was intercepted and a Jeep and an Ambassador car were examined which resulted in the recovery of wrist watches of foreign origin valued at Rs. 40 lakhs and more. The occupants of the said vehicles were interrogated and it was gathered from them that a trawler by name "King Fisher" had been used to bring the said watches from a foreign ship and that the watches were off loaded at Harwood point, Kakdwip. That trawler was located

and searched and that resulted in recovery of 2 pairs of binoculars and a compass all of foreign origin. There were ten crew members on Board the said trawler out of whom eight are die present petitioners.

3. It has been urged in this group of petitions that because of the non-supply of copies of original documents, the detenus right to make an effective representation under Article 22(5) of the Constitution is violated thus vitiating the orders of detention in the present group of cases. In paragraph 5(iv) of Special Civil Application No. 231 of 1985 the averments in this connection are as under:

The petitioner says and submits that some of the statements mentioned in Annexure "C" originally are in Hind-and Bengali language. The petitioner says and submits that what they have been served are the documents in English language and its translations into Gujarati language which are allegedly true copies of the statements in Bengali and Hindi language. The petitioner says and submits that they have not been served with the original statements in Hindi and Bengali language. He has been served with the true copies of the said statement in Bengali and Hindi i.e., in the English and Gujarati language. The petitioner says and submits that the detaining authority allegedly claims that the said documents which are served on me are the true copies of translations of the original statements. The petitioner says and submits that it is the duty of the detaining authority to furnish the original statement recorded in Bengali and Hindi languages. Unless the original documents in Bengali and Hindi languages are furnished, the petitioner is handicapped to compare with what has been served on him i.e., allegedly its true translated copies. The petitioner says and submits that he cannot accept that the documents served on him are the correct translated copies of the original statement in Bengali and Hindi languages unless the original statement in Bengali and Hindi languages are furnished to him. The petitioner says and submits that there are mistakes in the translation in English language into Gujarati language and therefore there may be mistakes in the allegedly true translation in English language from original statements in Bengali and Hindi languages, however since the detaining authority has not furnished the original statements in Bengali and Hindi languages. The petitioner is not in a position to find out whether it is a correctly translated copy. The petitioner says and submits that in the aforesaid circumstances the documents are not properly communicated to him and therefore he has been deprived from making representation effectively and therefore the order is bad and is liable to be set aside.

4. In the affidavit-in-reply of the Joint Secretary to the Government of India, Ministry of Finance, New Delhi in para 11 what has been stated is as under:

11. With reference to paragraph 5 (iv) of the petition I say and submit that the contentions raised in the said paragraph are not tenable, I say and submit that all the documents which were relied upon in this case were translated into Gujarati and copies of the translated versions of the said documents were

furnished to the petitioner. I say that all the documents either in Bengali language or in Hindi language or in English language were translated into Gujarati and copies of said translated version of the said documents were furnished to the petitioner. I say that the petitioner had never made a grievance that he had not been supplied the original documents either in Hindi or Bengali language. I say that the said contention raised by petitioner is an afterthought. I deny that the documents are not properly communicated to the petitioner and therefore the petitioner is deprived of an opportunity of making an effective representation against the impugned order of detention. I also deny that the impugned order is bad or liable to be quashed and set aside on that ground or on any other ground as alleged or otherwise.

The said statements made in the reply affidavit make it clear that copies of the original documents which were in Hindi and Bengali have not been furnished to the petitioners. It is not in dispute that the same is the case in all the petitions under consideration.

5. In this connection, reference may first be made to Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others, . After referring to and considering Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others, and Kamla Kanyalal Khushalani Vs. State of Maharashtra and another, and several other decisions, the Supreme Court has observed that two propositions clearly emerged from the resume of decided cases: (a) all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detent along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstance and for reasons to be recorded in writing not later than 15 days from the date of his detention and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Article 22(5) of the Constitution. We are not required to consider the question of delay in the present group of petitions but it has been clearly laid down that all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu. The question that arises in this connection is as to whether or not furnishing copies of translations of documents would meet with the requirements of Article 22(5) of the Constitution.

6. Again in Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, it has been observed that whatever angle from which the question is looked at, it is clear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences, that the "grounds" must be self-sufficient and self-explanatory and

that copies of documents to which reference is made in the grounds must be supplied to the detenu as part of the "grounds". It is pertinent to note that copies of documents are to be supplied and not mere translations of documents.

7. The learned counsel for the petitioners has invited our attention to an unreported decision dated 7th September 1982 rendered by a Division Bench of the High Court of Maharashtra. In that case, together with the grounds of detention copies of the translated version in Malayalam of the documents and statements enumerated at items Nos. 1 to 5 of the list of documents given in that case alone were supplied to the detenu. Copies of the documents in original which were in English language were not supplied to the detenu together with its Malayalam translations. That was squarely the contention before the said Division Bench. After considering several authorities in the said judgment, reference has been made to the decisions of the Supreme Court in *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, . Reference was also made to *Lallubhai's* case (*supra*) and after inviting reference to *Kamla 's* case (*supra*) the Division Bench has observed that "to say the least translations could not take the place of originals. Translations are not made nor are verified by the detaining authority. Normally the work of translation is left to subordinate officers or to reporting department the translations are not made by experts or official translators. Translations are free translations of the original. In some cases it is noticed that while translating some portion from the original is wholly omitted. Sometimes there are apparent mistakes in two versions." The said Division Bench has then proceeded to observe that the aforesaid was indicative as to why both original as well as translated copies should be supplied to detenus and that unless the same was done the detenus would not be in a position to ascertain whether the translations are faithful and true. The Division Bench has also sought support from an earlier decision of the said High Court in Criminal Application No. 236 of 1982 *Sayed v. State of Maharashtra* decided on 6th August 1982. After considering the relevant decisions on the point, the said Division Bench had concluded that communicating the grounds of detention furnishing copies of the grounds in the language with which the detenu was conversant was in addition to the supply of copies of the documents in original language and not a substitute for it. We are in respectful-agreement with the said ratio and to us also it seems that unless such a view is taken the very purpose behind Article 22(5) would be frustrated. It hardly needs an argument to appreciate that the subjective satisfaction of the detaining authority is based on the original documents placed before it. In the affidavit filed by the respondents in the present group of cases, it is nowhere stated that the detaining authority did not know Bengali language and so what was considered by the detaining authority were also English translations of the statements made which were recorded in Bengali. However, even assuming for the sake of argument that it was so, the point still survives in the present group of petitions regarding the original statements recorded in Hindi. Annexure C to Special Civil Application No. 231 of 1985 shows that that there are seven statements in Bengali and twenty-seven statements in Hindi. In

the other petitions also there are such statements in Bengali and Hindi languages. If supply of mere translated copies of the documents to the detenu is not treated as substantial compliance of Article 22(5) of the Constitution then in substance the documents placed before the detaining authority are not supplied to the detenu at all.

8. In this connection on behalf of the respondents Mr. J.U. Mehta, the learned Additional Public Prosecutor had contended that the requirements of Article 22(5) would be satisfied if translations only were supplied to the detenu. In view of the aforesaid clear decision of the Bombay High Court on the point and in view of the ratio of the aforesaid other Supreme Court decisions, we are unable to agree with the said submission of Mr. Mehta. Mr. Mehta has also taken us through a number of authorities of the Supreme Court as well as those of other High Courts in support of his submission. We have carefully gone through all of them but in none of the said decisions do we find a principle laid down which is contrary to or inconsistent with the ratio of the aforesaid Maharashtra decision. In fact, after what has been laid down in Maneka Gandhi's case and in number of other cases following the said decision, the law of preventive detention has now to satisfy a two-fold test viz. (1) that the protection and the guarantee aforesaid under Article 22(5) are complied with and (2) that the procedure is just and reasonable. In this view of the matter, unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds without the copies of the original documents would not give him a real opportunity to represent but would merely be an illusory opportunity to make a representation to the detaining authority.

9. We therefore hold that since in the present case copies of documents which were placed before the detaining authority and which were in Hindi and Bengali as stated above were not applied to the detenus their right to make an effective representation within the meaning of Article 22(5) of the Constitution is violated the petitioners are entitled to succeed on this ground alone, it has not become necessary to hear the petitioners on the other grounds raised in the petitions.

10. We would like to observe at this stage that after examining and hearing a number of detention matters under various Acts, it seems that if the intention of the Legislature in providing such laws is not to be frustrated then in this field where the law is more or less settled and where matters are left to the subjective satisfaction of the detaining authority more awareness and care are required to be shown on the part of the detaining authorities than what are shown at present. It does not require too much of imagination to appreciate that generally speaking in a vast majority of such cases only technical objections are taken against orders of detention. If therefore due and proper care in all respects is taken before orders of detention are passed then there would be very little or no scope for such technical objections. The anxiety expressed by the Legislature at the time of passing such Acts evinces their deep concern in the matter and so all concerned having the duty and responsibility to carry out faithfully the purpose

of such Acts will need to show the utmost circumspection and care while dealing with such matters. Such care and scrutiny is likely to achieve a two-fold purpose. Those who really deserve preventive detention will be more often than not behind bars and those who do not so deserve will not be adversely affected. In addition, much of public time and money "would be saved and an atmosphere will be generated where man in the street will start feeling that the mightiest can also be brought to book. Before ending, we cannot help mentioning that sometimes while examining such matters a suspicion and feeling also surface as to whether the gaps noticed in the grounds of detention are merely a result of inadvertence or negligence or the same are pointers in some other directions. If therefore the utmost care and circumspection is shown after availing of legal advice, if need be, before passing such orders, no room will be left even for such suspicion.

11. In the result, the petition is allowed. The detenu is directed to be released forthwith if not required in any other case. Rule is made absolute accordingly.