

(2003) 09 AP CK 0064

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15161 of 2003

V. Narasamma

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 3(1)
Constitution of India, 1950 — Article 22(5)

Citation : (2003) 5 ALD 701 : (2003) 2 ALT(Cri) 467

Hon'ble Judges : K.C. Bhanu, J; Bilal Nazki, J

Bench : Division Bench

Advocate : K. Suresh Reddy, for the Appellant; Government Pleader for Home and Advocate-General for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J

1. This writ petition has been filed by one V. Narasamma w/o Mallaiah Yadav challenging the detention of her son V. Srisailam @ Chinna Srisailam Yadav (hereinafter referred as "the detenu"). It is submitted that, on 15-7-2003 an order of detention has been passed by Commissioner of Police, Hyderabad which was served upon the detenu and he was detained in Central Prison, Chenchalguda, Hyderabad. The grounds of detention were also served on the detenu on 19-7-2003. The order of detention has been challenged on the ground that the order of detention was not in accordance with the provisions of Section 3(1) of the A.P. Prevention of dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred as "the Act"). It is also stated that two of the grounds of detention do not involve public order which was an essential ingredient to detain a person under the detention law. It is further contended that on the basis of grounds of detention the detenu could not be termed as "goonda" as defined in

Section 2(g) of the Act.

2. In the counter-affidavit, which has been filed by the Commissioner of Police, he has stated that the order of detention was passed by him on 15-7-2003 and the detenu has been lodged in Central Prison, Chenchalguda, Hyderabad. He had passed the order in terms of Section 3(2) of the Act. The State Government had been informed about the detention of the detenu. The detention order was served on the detenu on 15-7-2003 under acknowledgement. The detenu was informed of his right to make representation to the detaining authority i.e., the Commissioner of Police, Hyderabad or the Chief Secretary to Government of Andhra Pradesh, Hyderabad or the Advisory Board. The detenu was also informed of his right to be heard in person by the Advisory Board. The detenu's wife and mother were also informed about the detention. The grounds along with the material relied on for passing the order of detention was served on the detenu on 18-7-2003 in accordance with Section 8 of the Act. The Government vide G.O. Rt. No. 3391, dated 22-7-2003 have approved the order of detention. All the requirements of law have been complied with. He submitted that he had passed the order of detention after satisfying himself that the detention was necessary in order to prevent the detenu to act in a manner prejudicial to the maintenance of public order. Then he made the following submission in the counter-affidavit:

"I submit that a passing reference is made by me with regard to the past conduct of the detenu in the course of narration of facts in the order as well as in the grounds of detention to show the propensity of the detenu as evidenced by the violent anti-social acts committed by the detenu. I submit that the series of activities set out in the grounds of detention warrant the invocation of the provisions of Act 1 of 1986 in the interest of public order."

3. Besides the grounds referred to above, it was also argued at the Bar that the detaining authority has relied on material which was not supplied to the detenu hence a prejudice has been caused to the detenu in making representation which was a constitutional right.

4. Now, let us have a look on the grounds of detention. The introductory para of grounds of detention reads as under:

"You, V. Srisailam @ Chinna Srisailam Yadav, S/o Mallaiah, aged about 40 years, R/o H.No. 8-3-229/5/2, Yousufguda, Hyderabad are a rowdy sheeter of Jubilee Hills PS, Hyderabad city and a "goonda" and a "land grabber" as defined in Clauses (g) and (j) of Section 2 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 by habitually engaging yourself in unlawful activities, such as, murders, attempt to murder, criminal intimidation, trespass, land grabbing etc., prejudicial to the maintenance of public order."

Then the order further proceeds to say, "The following fact would prove". Then description of cases is given. The first case relates to Crime No. 2/2003 under

Sections 341, 427, 506, 363 IPC read with Section 511 IPC. The second case relates to another case being Crime No. 11/2003 u/s 506 IPC read with Section 7(1) of Criminal Law Amendment Act. The third case relates to Crime No.53/2003 under Sections 447, 427, 431 IPC. From para 4 to para 6 of the grounds of detention are explanatory but in para 7 it has been stated that the detenu was indulging in goondaism by acting as a leader of a gang, using criminal force and intimidation and in land grabbing and his activities were causing a feeling of insecurity and fear in the public and thus were prejudicial to the maintenance of public order.

5. Now, the satisfaction appears to have been arrived at by the detaining authority on the ground that the detenu was habitually engaging himself in unlawful activities such as murder, attempt to murder, criminal intimidation, trespass, land grabbing etc. None of the cases to which a reference has been given in the grounds of detention refers to a case of murder or of attempt to murder. Even if there were any cases of murder or attempt to murder in which the detenu was involved which had been taken into consideration by the detaining authority, the particulars of those cases were not furnished to the detenu. The material supplied by the detaining authority along with the grounds of detention has been annexed with the writ petition. The list of documents shows that there were in all 17 documents which have been relied on by the Commissioner of Police and it contained 43 pages. The second page of the document is the list of criminal cases in which the petitioner was involved. The title reads as: "Rowdy sheeter: V. Srisailam Yadav @ Chinna Srisailam Yadav of P.S. Jubilee Hills involved in the following criminal cases". It gives the list of 20 cases. Admittedly out of these 20 cases the necessary particulars of only 3 cases have been given to the detenu. The Commissioner of Police in his counter-affidavit stated that he only gave a passing reference to the past conduct of the petitioner, but the material supplied by him shows that the list of 20 cases was before the Commissioner of Police at the time of passing the order of detention. In the first paragraph of the grounds of detention the Commissioner of Police had stated specifically that the detenu was habitually engaged in cases involving murder and attempt to murder whereas in the material which was supplied no case was of murder or of attempt to murder, but in the list which we are considering now there are cases under Sections 302 and 307 IPC. Therefore, in our view, this material was before the detaining authority while coming to subjective satisfaction for detention of the detenu in order to protect public order and it was not by way of passing reference that the past conduct of the detenu was referred to by the Commissioner.

6. Mrs. Vijayalaxmi, learned Government Pleader who appeared for the learned Advocate General submitted that the material which was supplied to the detenu was the only material on the basis of which the detention order was passed. We have no quarrel with that, and in effect the argument which is sought to be made against the order of detention was also the same, but it was stated that the material contained also a list of 20 cases of which no particulars admittedly were

given to the detenu, therefore the detention was bad. The learned Government Pleader vehemently argued that this material is not part of the material which was decisive in the detaining authority's judgment to pass the order of detention, it was only with reference to the past conduct that this material had been placed before the detaining authority. She refers to a judgment of Supreme Court reported in Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, , in which the Supreme Court held:

"Much stress was, however, laid on the fact that the detenu had not been furnished with the copies of the first information reports in the criminal case in which he was convicted and in the three other criminal cases pending against him. It is said that the failure to furnish these documents vitiates the impugned order of detention. The contention appears to be misconceived. Under Sub-section (5) of Section 173 of the Criminal Procedure Code, 1973 the detenu had already been supplied with all the documents or relevant extracts thereof on which the prosecution relied in the criminal case in which he was convicted as well as on which the prosecution proposes to rely in the three criminal cases pending against him. There was, therefore, no need to supply the copies of the first information reports referred to in the grounds of detention over again, and no grievance can be made that the detenu was deprived of the right of making a representation at the earliest opportunity due to non-supply of these documents. The contention that the constitutional safeguards under Article 22(5) read with Section 8 of the Act were not complied with due to non-supply of documents or failure to supply the documents in a language with which the detenu was conversant must, therefore, fail."

Then a reference is made to para 24 of the judgment which lays down:

"24. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed usually from prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order. Of course, such prejudicial conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary."

Para-24 of the judgment does not lay down that if the past conduct is taken into consideration then relevant material need not be supplied to the detenu, but part of para-19 which has been quoted hereinabove lays down that as far as the particulars of the cases which were registered or pending against a detenu the FIRs need not be supplied because under Sub-section (5) of Section 173 Cr.P.C an accused gets all the relevant material contained in the charge-sheet. Therefore, the contention of the learned Government Pleader is that, even if a reference has been made to 20 cases and even if those cases were taken into consideration for passing the order of detention even then no prejudice is caused to the detenu because necessary material with regard to those cases would have already been in possession of the detenu in terms of Section 173 Cr.P.C. There is

a judgment of Supreme Court in Syed Farooq Mohammad Vs. Union of India and another, , which clearly lays down that all material and all the documents which are taken into consideration while passing the order of detention must be supplied to the detenu for making an effective representation in terms of Article 22(5) of the Constitution. In the case before Supreme Court, it was the contention that a bail application had been moved by the detenu which had been rejected and the particulars of the bail application and rejection order were not supplied to the detenu. On facts, the Court came to the conclusion that filing of bail application or rejection of bail application had not been considered by the detaining authority at the time of recording the satisfaction with regard to the detention of the accused, therefore the argument made before the Court in that case was not accepted. But, on the question of principle that the copies of the documents which were taken into consideration by the detaining authority at the time of passing of the order of detention have to be supplied to the detenu for making effective representation under Article 22(5) of the Constitution, the Supreme Court in para-10 held:

"10. The third ground of challenge is that the relevant document i.e., bail application of the petitioner and order made thereon which might have been considered by the detaining authority were not supplied to the petitioner and as such his right of making effective representation guaranteed under Article 22(5) of the Constitution of India has been seriously prejudiced. This ground is without any substance because firstly there is nothing to show from the grounds of detention that the rejection of this bail application by the Sessions Judge, Greater Bombay on January 5, 1990 was considered by the detaining authority before passing the impugned order of detention and as such this being not referred to in the grounds of detention, the documents had not been supplied to the petitioner, and it, therefore, cannot be urged that non-supply of this document prejudiced the petitioner in making effective representation against the order of detention. Article 22(5) of the Constitution, undoubtedly, mandates that all the relevant documents referred to in the grounds of detention and which are considered by the detaining authority in coming to his subjective satisfaction for clamping an order of detention are to be supplied to the detenu. The said document was not considered by the detaining authority in coming to his subjective satisfaction and in making the impugned order of detention. The non-furnishing to the detenu of the said document i.e., the bail application and the order passed thereon; does not affect in any manner whatsoever the detenu's right to make an effective representation in compliance with the provisions of Article 22(5) of the Constitution of India. This ground, therefore, is wholly untenable."

7. In the present case a list of 20 cases has been supplied along with the grounds of detention to the detenu, this was the material before the detaining authority while passing the order of detention, in his counter-affidavit the Commissioner of Police in unambiguous terms admitted that he had taken past conduct into consideration and that past conduct related to the alleged

commission of crimes in 20 FIRs by the detenu. Therefore, following this judgment we have no doubt in our mind that the right of the detenu to make an effective representation in terms of Article 22(5) of the Constitution of India has been violated and he has got prejudiced in making representation.

8. Reference is made to *M. Ahamedkutty Vs. Union of India (UOI) and Another*, . In this case, the controversy was that the bail application and the order on the bail application were not supplied to the detenu which has caused prejudice to him in making a representation. While considering this argument the Supreme Court came to the conclusion that the detenu had the right to be furnished with the grounds of detention along with the documents so referred to or relied upon and if there was a failure or even delay in furnishing the documents it would amount to denial of the right to make an effective representation. The Supreme Court also was of the opinion that following two principles have been settled by a long line of decisions (1) the detaining authority must as soon as may be, i.e., as soon as practicable, after the detention, communicate to the detenu the grounds on which the order of detention has been made, (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. When some documents are referred to or relied on in the grounds of detention without copies of such documents having been given to the detenu, the grounds of detention would not be complete. The line of judgments on which the Supreme Court relied were; *Frances Coralie Mullin Vs. W.C. Khambra and Others*, , *Frances Coralie Mullin v. W.C. Khambra*, 1980 (2) SCC 272, *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, , *Pritam Nath Hoon Vs. Union of India (UOI) and Others*, , *Shri. Tushar Thakker Vs. Union of India (UOI) and Others*, , *Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others*, , *Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others*, , and AIR 1981 1620 (SC) (1).

9. We are not going into all those cases but some cases need a mention specifically. The Supreme Court relying on *Mehrunissa Vs. State of Maharashtra*, , held that non-supply of material documents on the ground that detenu was aware of the contents of the documents was immaterial. In *Mehrunissa's* case Justice O.Chinnapa Reddy, as His Lordship then was, while speaking for the Court by a brief judgment laid down:

"The principal submission made by Miss Rani Jethamalani, learned Counsel for the petitioner, in this application for the issue of writ of habeas corpus is that copies of material documents referred to in the grounds of detention were not supplied to the detenu and he was thus prevented from making an effective representation. The documents about which the complaint is made are the Panchnama dated 15-1-1980 said to have been recorded at the time of the seizure of the silver and the statement said to have been made by the detenu in the enquiry u/s 108 of the Customs Act on 15-1-1980. Miss Jethamalani relied upon the decisions of this Court in *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, and *Smt. Shalini Soni and Others Vs. Union of India (UOI) and*

Others, . No counter has been filed on behalf of the State of Maharashtra, but Shri O.P. Rana, learned Counsel for the State of Maharashtra, urged that the copies of the documents were not supplied to the detenu as the detenu was already aware of the contents of the documents. That is hardly an answer to the submission made on behalf of the detenu. The detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents. The failure of the detaining authority to supply copies of such documents vitiated the detention, as has been held by this Court in the two cases cited by Counsel. The detenu is, therefore, entitled to be released. He is accordingly directed to be released forthwith. The petition is allowed."

This judgment was accepted even in 1990 in the judgment to which a reference has been made herein above in *M. Ahamedkutty Vs. Union of India (UOI) and Another*, . The Supreme Court further went to the extent of saying that one has to bear in mind that the detenu was in jail and he had no access even to his own documents. Therefore, it is not open for the detaining authority to say that the copies of the FIRs were the copies of the documents connected to the 20 cases pending against the petitioner which were already in his possession.

10. Reference is made to another judgment in *Mohd. Zakir Vs. Delhi Administration and Others*, . This is also a short judgment of two Judges. This was a case in which relevant material was supplied to the detenu but was supplied later than supplying the grounds of detention and the Supreme Court found that the infirmity was clearly violative of Article 22(5) of the Constitution of India. In that case, these documents were supplied to the detenu after he had made a demand but Supreme Court still stated that he had been prejudiced. While relying on some earlier judgments the Supreme Court noted:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention *pari passu* the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

In the present case, the detaining authority has decidedly taken 20 cases into consideration while passing the order of detention and in coming to subjective satisfaction that the detenu needs to be detained. It is true that the order of detention only refers to three cases but the order of detention itself shows; ""Ends: (Material papers containing 43 +45 pages and their translation papers)" and those enclosures contained not only the list of 20 cases but also FIRs of 3 cases and statements of some of the witnesses recorded in those cases. It does not contain any particulars of the 20 cases referred to in the documents titled as "*Rowdy Sheeter : V. Srisailam Yadav @ Chinna Srisailam Yadav of P.S Jubilee Hills involved in the following criminal cases* ". Therefore, in our view, the right of the detenu to make an effective representation has got prejudiced. Since we are

allowing the writ petition on this ground alone the other grounds agitated are not being addressed by us.

11. The writ petition is allowed. The order of detention is quashed. The detenu be released forthwith if not required in other cases.