
(2016) 08 AP CK 0008
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5565 of 2016

Vankudoth Gouri	Vs	APPELLANT
State of Telangana		RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (2016) 6 ALT 257 : (2016) 3 ALTcr1 385 : (2017) 1 AndhLDCriminal 238 : (2016) 4 Crimes 270

Hon'ble Judges : Sri Sanjay Kumar and Sri M. Seetharama Murthi, JJ.

Bench : Division Bench

Advocate : Sri K. Rajasekhar, Advocate, for the Petitioner; GP for Home (TG), for the Respondent

Final Decision : Allowed

Judgement

Sri M. Seetharama Murthi, J.—Vankudoth Mohan S/o Chathriya (hereinafter, "detenu") who is the husband of the writ petitioner-Vankudoth Gouri was subjected to preventive detention under Order of Detention, dated 14.10.2015, passed by the Collector and District Magistrate, Khammam, in exercise of power under Section 3 (1) and (2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter, "Act 1 of 1986").

2. In this writ petition, the challenge is to the detention order referred to supra, which was approved by the Government of Telangana under G.O. Rt. No. 2838, General Administration (Law & Order) Department, dated 26.10.2015. Thereafter, the matter was referred to the Advisory Board and upon considering the opinion and report, dated 28.11.2015, of the Advisory Board, the Government of Telangana confirmed the detention of the detenu for a period of twelve months from the date of his detention, 14.10.2015, vide G.O. Rt. No. 29, General Administration (Law and Order) Department, dated 08.01.2016.

3. We have heard Sri K. Rajasekhar, learned counsel for the petitioner and the learned Government Pleader for Home appearing for the State.

4. Though various issues are urged and sought to be canvassed against and in support of the detention of the detenu, we find that the issue involved in this writ petition can be adjudicated on a few of the principal grounds.

5. One such principal ground on which the detention of the detenu is challenged is that all the materials relied upon by the detaining authority were not made available to the detenu and that the detenu, who is uneducated and has acquaintance only with Telugu language, understands and communicates in Telugu language and that but for affixing his signature, the detenu was incapable of reading or writing Telugu and English languages and that the detenu was neither provided with translations of all the material documents relied upon nor was he explained the contents thereof and that some of the material documents supplied are illegible and that therefore, he was denied the constitutional right of effectively making a representation against his detention and that the said failure on the part of the State vitiated the entire proceedings.

6. In the counter affidavit of the Collector and District Magistrate, Khammam, insofar as this aspect is concerned, it is stated that the allegations in the supporting affidavit of the wife of the detenu are false and baseless and that the detenu was supplied copies of the entire material relied upon by the detaining authority, including copies of panchanamas and other material, with all legible copies and that for the first time, the petitioner has come up with a plea that some of the documents are not legible.

7. Though along with the counter affidavit, the copies of material documents, which were said to have been supplied to the detenu, were filed, pertinently, the acknowledgement/receipt, if any, obtained from the detenu is not filed to show that the detenu received the entire set of documents and to demonstrate that he was supplied translated copies of the "detention order" and the "grounds of detention" and was explained the contents thereof. Therefore, there is no evidence produced to show that the translated copies of the "order of detention", the "grounds of detention" and the material documents which are in English were either supplied or the contents thereof were explained to the detenu in the language he knows and understands. A perusal of the material documents would show that some of the material documents in the respondents' paper book, namely, panchanamas at page Nos. 68, 63, and 58, which are in Telugu, and the copy of the Crime and Occurrence Report at page No. 34 related to C.O.R. No. 902/14-15 of Prohibition & Excise Station, Khammam, which is in English, are not legible. Excluding the documents, which are in Telugu language, a good number of material documents are in English and the translated copies of the same were admittedly not supplied to the detenu.

8. Article 22 of the Constitution provides for protection against arrest and detention and clauses (4) and (5) of Article 22, dealing with preventive

detention, read as under:

"22. ...

(1)

(2)

(3)

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order 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.

(6)

(7) Parliament may by law prescribe ?

(a) ...;

(b) ...; and

(c) ..."

9. Thus, the Constitution vests a person subjected to preventive detention with the right of making a representation against the order of detention; and, to facilitate exercise of this constitutional right, the detaining authority is required to communicate to the detenu, the grounds and the material on which the order has been made so as to afford him a fair and reasonable opportunity of making an effective representation at the earliest. The law on this aspect is no longer res integra. Recently, a Division Bench of this Court in *Vasanthu Sumalatha v. State of Andhra Pradesh* represented by its Chief Secretary, Hyderabad, 2016 (1) ALT 738 (D.B) , after making copious reference to various precedents dealing with the legal principles on the subject, held to the effect that it is imperative to supply legible copies of documents relied upon by the detaining authority to the detenu in a language he knows and understands and failure to do so results in

the detenu being denied the opportunity of making an effective representation and would render his continued detention illegal.

10. The learned Government Pleader, however, would contend that as the detenu cannot read and write Telugu and English languages, no purpose would have been served by furnishing him translated Telugu copies of all the material documents, which were relied upon by the detaining authority and which formed the basis of the order of detention and the grounds of detention. The law ordains that irrespective of whether or not the detenu could read Telugu language, furnishing him with the translated Telugu copies of all the documents is a mandatory requirement to protect his constitutional right of making an effective representation against the order of detention passed against him. If the documents supplied are in Telugu language, which the detenu knows and understands, the detenu could always take the assistance and help of any one of his family members/relatives/friends who are better educated and make them read the contents of the documents to him, which are in a language, which he understands, and discuss with them and formulate his representation effectively against his detention. Therefore, the contention of the learned Government Pleader to the effect that if only the detenu is a literate person the grounds of detention and the material documents which formed the basis of detention order need be given in a language which he can understand and in a script which he can read, does not merit consideration.

11. Coming to the next principal contention that the bail orders are not supplied to the detaining authority as well as the detenu, what is to be noted is that the ground Nos. 2, 3 and 4 in the grounds of detention disclose that in all the three crimes mentioned in the said grounds, the detenu was enlarged on bail. Nevertheless, admittedly, neither bail orders were made available to the detaining authority which passed the detention order nor were the copies of the same supplied to the detenu. Thus, even without looking into any bail orders, the detaining authority simply extracted the grounds of detention from the sponsoring authority's letter and reproduced the same in the detention order. This fact clearly indicates non-application of mind of the detaining authority before arriving at subjective satisfaction. In *Vasanthu Sumalatha* (1 supra), this Court held thus:

"To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention."

In that view of the matter, the State cannot therefore seek to support the order of detention in the present case as there is utter failure of compliance with the requirement of Article 22(5) of the Constitution and thereby, the detenu was

prevented from making an effective representation against his detention for the reason that he was not supplied all the material documents that were relied upon by the detaining authority in reaching its subjective satisfaction and as some of the documents supplied are not legible and as some more of the documents are in a language which is not known to the detenu and as the translated copies of such documents were not made available to him and that there was no oral explanation thereof in a language, which he knows and understands.

12. Be it noted that considering the nature of the allegations that are made in the supporting affidavit of the wife of the detenu, particularly, the allegation that there is non application of mind, the original record, which was made available to the detaining authority and the record of the said authority was directed to be produced before this Court for perusal. The original record would reflect that the sponsoring authority, i.e., Prohibition & Excise Superintendent, Khammam Division, addressed a letter, dated 10.02.2015, to the Collector & District Magistrate, Khammam, enclosing relevant documents and making a mention therein of the grounds of detention. A careful perusal of the file produced before this Court would show that the grounds of detention mentioned in the letter of the Superintendent, Prohibition & Excise, are verbatim carried into the order of detention of the Collector and District Magistrate, Khammam, with the same mistakes which were there in the sponsoring authority's letter. The verbatim reproduction to the letter and with the same spelling mistakes would prompt us to accept the submission made on behalf of the petitioner that a soft copy was obviously furnished by the sponsoring authority and that the contents thereof were copied as it is into the detention order without application of mind. The said course adopted would make it manifest that the detention order was made without even minimum independent thought and application of mind.

13. In the sponsoring authority's letter addressed to the detaining authority, it is averred that the accused is a habitual offender and that a number of cases were booked against the detenu though only four crimes are mentioned in the grounds of detention. In the order of detention also, there was a reference only to four incidents/crimes. Yet it was observed that the detenu is a habitual offender and a number of cases were booked against him. The said observations about the alleged involvement of the detenu in a number of cases were obviously made without there being any material produced before the detaining authority in regard to the other cases. It is also pertinent to note that when there is a mention of only four crimes in which the detenu was allegedly involved, it remains unexplained as to how the detaining authority came to the conclusion that the detenu was caught a number of times and that he is a habitual offender in the bootlegging activities of manufacturing, purchase, sale, possession and transportation of illicit distilled liquor. It is also unexplained as to how the detaining authority observed in the detention order to the effect that it is also very much clear that despite number of cases being booked against the detenu, the detenu has been continuing to abuse the provisions of the A.P Prohibition Act.

14. The detention order, wherein a reference was made to a number of cases in which the detenu was allegedly involved, discloses that though there is no material supplied in that regard to the detenu, his alleged history and antecedents were taken into consideration by the detaining authority. Whether the said observations in the order of the detaining authority are based on any material or not also remains unexplained. Such reliance on the detenu's alleged history and antecedents, which is not spelt out by the material documents that were supplied to the detenu resulted in denying him an opportunity to make an effective representation as guaranteed under Article 22(5) of the Constitution of India. In consequence, the detention of the petitioner's husband, Vankudoth Mohan, is rendered wholly illegal on account of the procedural lapses on the part of the State.

15. Further, as rightly pointed out, the detention order in the case on hand insofar as the final observations are concerned is a verbatim reproduction of the detention order dated 14.10.2015 passed by the very same Collector and District Magistrate, Khammam District, in R.C.No.C1/3025/2015 in relation to another detenu, Islavath Tara Chand. A plain perusal of the copy of the said order and its examination in juxtaposition with the grounds of detention in the case on hand would disclose that except for the details with regard to the cases in which the detenues in both the cases were involved, rest of the contents in the grounds of detention are identical in all respects except for the change in the individual case details. On a careful examination of the matter, we are in agreement with the learned counsel for the petitioner that the detention order impugned in this writ petition was passed mechanically and is vitiated by non-application of mind while arriving at subjective satisfaction.

16. Viewed thus, we find that there is acceptable merit in the principal contentions of the petitioner and that the writ petition deserves to be allowed.

17. The writ petition is accordingly allowed and the impugned detention order, dated 14.10.2015, passed by the Collector-cum-District Magistrate, Khammam, and the approval thereof by the Government of Telangana, vide G.O. Rt .No. 2838, General Administration (Law & Order) Department, dated 26.10.2015, and the consequential confirmation vide G.O. Rt. No. 29, General Administration (Law & Order) Department, dated 08.01.2016, are hereby set aside. The petitioner's husband-Vankudoth Mohan shall be set at liberty forthwith unless his confinement is required in relation to any other case. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.