
(1981) 07 GAU CK 0001
In the Gauhati High Court

Yandrambam Sonachand Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 06-07-1981

Acts Referred:

Constitution of India, 1950 — Article 22
National Security Act, 1980 — Section 8

Citation : (1982) CriLJ 77

Hon'ble Judges : K. Lahiri, J;B.L. Hansaria, J

Bench : Division Bench

Judgement

B.L. Hansaria, J.—Detention laws undoubtedly curtail the liberty of citizens. These laws have nonetheless been regarded as necessary because the State must have some machinery to prevent harm to the society. But then, these have been characterised as evil also, not to speak of their being draconian. We have to consider the question posed in this case in this background. The question is as to when can the grounds be said to have been communicated to a detenu.

2. The broad facts alone " may be noted to answer this question. The same is that the petitioner had been arrested, according to him, on 9-4-1981 and was once bailed out on 22-4-1981 to be arrested again on the same day in connection with some other case. He was ordered to be released on bail in that case on 7-5-1981 and after he had furnished necessary bail bonds etc. respondent No, 3 refused to release him on the ground that an order of detention under the provisions of the National Security Act, 1980 (hereinafter called the Act) had been passed against him. The grounds of detention was served on the petitioner on 14-5-1981. The grounds were thus served later than 5 days from the date of detention, and according to the petitioner, there were no exceptional circumstances for not communicating the grounds within 5 days and no reasons for the same have also been recorded. If this were to be the position, the detention would undoubtedly be in violation of the constitutional safeguards as well as the statutory provision contained in Section 8(1) of the Act.

3. Though the case of the petitioner is that he was under detention since 7-5-1981, from the records produced by the State, we are satisfied, as is the case of the respondents, that the detention was from 8-5-1981. The grounds must have been communicated therefore within 13-5-1981, but records again clearly show that copy of the grounds was received by the detenu on 14-5-81. It was thus later than 5 days from the date of detention even if 8-5-1981 is taken to be that date.

4. This being the position, the learned Advocate General, Manipur first submitted that the grounds could not be served on 13-5-1981 because the process server who had been entrusted with this duty could not enter the jail premises on 13th, wherein the detenu was kept confined in connection with some other case. Our attention was invited to the report of the process server, whose English rendering would read as below a

Copy is handed over at 9 A.M. on 14-5-1981. Because of restriction of entry to Jail after 7 P.M., the same could not be delivered on 13-5-1981.

Now, there is nothing exceptional in the restriction of entry to Jail after a fixed hour under the normal circumstances. We do not however think if the Jail authorities would have refused to accept a copy of the grounds of detention from the Process Server if the same would have been handed over to them for onward transmission to the detenu. In any case, it must have been within the knowledge of the District Magistrate who is the detaining authority as to after what time it would not be possible to enter the Jail even for such a purpose, The detaining authority having waited till the last day ordinarily available in this regard, it has to blame itself for its failure to serve the grounds within the period ordinarily prescribed. This apart, we do not find any record in the hand of the learned District Magistrate about these reasons. We would think that when the law required reasons to be recorded in writing, the same has to be reasons of the detaining authority and not of a person like a Process Server,

5. Faced with this situation, learned Advocate General took the stand that as the grounds had been sent out from the office of the District Magistrate on 13th, we should hold that these had been communicated on 13th itself. We were referred to Craies on Statute Law, 12th ed., at p. 111 of which it has been stated that if a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the statute had in contemplation, the courts are at liberty to infer that the statute by implication empowers that detail to be carried out, There could be no quarrel with this proposition and we would agree that the detaining authority can work out as to how the grounds are to be communicated to the detenu. The method employed may be personal service by the detaining authority, service through any of its employee, or may even be through post,

6. Important question is what have we to understand by the word

"communicate" finding place not only in Section 8(1) of the Act, but also in Article 22(5) of the Constitution. It was urged by relying on *State of Punjab Vs. Khemi Ram*, which decision was followed in *B. J. Shelat v. State of Gujarat* AIR 1978 SC 1109, that transmission of the grounds should be taken to be communication of the same. In *Khemi Ram* this question had arisen in the context of an order which had emanated on 31-7-1958 through a telegraphic message of the same day stating that the respondent before the Supreme Court had been suspended from service with effect from 2-8-1958. The telegram was however received after 4-8-1958, which was the date of retirement of the respondent. On these facts it was urged that the State was Incompetent to suspend, or to take disciplinary action against the respondent as he had retired by the time the telegram had reached him. The Supreme Court examined the question whether it could be said that the order of suspension had been communicated to the Incumbent on 31st July, which was the date on which the telegram had been put in. The court noted the ordinary meaning of the word "communicate", which is "to impart, confer or transmit Information." Communication of such order was held necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and, modify it if it thought fit, But once such an order is sent out, It goes out of the control of such an authority, and therefore, there would be no chance whatsoever of it changing its mind or modifying it. The date of actual receipt was not taken to be the date of communication because the person concerned may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. It was therefore stated that such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides.

7. *B. J. Shelat's* case (*supra*) has not said anything more in this regard, though it also noted the judgment of the Supreme Court in *State of Punjab Vs. Amar Singh Harika*, (as had been done in *Khemi Ram*), which had held that actual knowledge about the order of dismissal may perhaps become necessary because of the consequences that ensued from an order of dismissal. We do not think if the aforesaid decisions can come to the aid of the State, first because what had been stated in *Khemi Ram* has to be read in the context of the facts of that case Which was related to a disciplinary proceeding. That decision itself had stated that the meaning of the word "communicate" which was accepted therein ought to be given unless the provision in question expressly so provides. In Section 8(1) of the Act we read an express provision to the contrary inasmuch as that section enjoins on the detaining authority a duty to communicate the grounds to the detenu. Secondly, as the person has already been detained, the apprehension that if communication was to be read to mean service the same may be delayed or prevented by the person concerned, which was taken note of in *Khemi Ram* as one of the reasons to regard transmission as sufficient, would not arise in case of detention, Thirdly, if we were to agree that mere transmission

even through an employee of the detaining authority would be sufficient compliance with the requirement of the constitutional provision and the law in this regard, we have no doubt that the provision would be liable to be misused, and we cannot be a party to any such probability when we are dealing with the liberty of a citizen. The harsh law of detention cannot be made harsher by us.

8. We have also noted certain other decisions on this point. In *Harikisan Vs. The State of Maharashtra and Others*, , which had dealt with the question as to whether service of grounds in English to a detenu not having sufficient knowledge would be a due compliance with the constitutional requirement of communication of grounds to the detenu, it was observed in para 7 that communication in the context must mean imparting to the detenu sufficient knowledge of all the grounds on which the order of detention is based. In *Hadibandhu Das Vs. District Magistrate and Another*, it was accepted in para 6 that as the order made by the detaining authority had not been followed by service within 5 days as provided in the concerned statute (S. 7 (1) of the Preventive Detention Act, 1950), of the grounds on which the order was made, the order must be deemed to have become invalid and subsequent detention of the appellant was regarded as unauthorised.

9. Some recent cases as well may be noted, to wit, *Smt. Raziya Umar Bakshi Vs. Union of India and Others*, , *Nainmal Partap Mal Shah Vs. Union of India (UOI) and Others*, and *Surjeet Singh Vs. Union of India (UOI) and Others*, , which have held that even communication of grounds in a language with which the detenu is not conversant would not be an effective communication of the grounds to him to afford real opportunity of making representation against the order of detention,

10. On the face of these Judgments emanating from the highest court of the land, we would be mocking with the liberty of a citizen if we were to hold that even non-service of the grounds would be a communication of the same to him. It cannot be forgotten that communication of the grounds has a very salient purpose behind it and the same is to afford the earliest opportunity to the detenu of making a representation against the order of detention. How can a detenu make a representation if he would not know as to what are the grounds which had prevailed on the detaining authority to curtail his liberty?

11. It is because of the above that we had held in our order passed on 29-6-1981 that there was a flagrant violation of Section 8(1) of the Act read with Arts, 21 and 22 of the Constitution in this case as the grounds had not been communicated within 5 days, and there were no exceptional circumstances, nor did we find any reasons recorded in writing by the detaining authority about such exceptional circumstances, because of which we had ordered the release of the detenu.

K. Lahiri, J.

11-A. I am wholly in agreement with my learned brother Hansaria, J. but would put in my con-ceptipns about the so-called problem. It is just a back matter. Is

there a problem? Is not the meaning of the word "communicate" in Article 22(5) of the Constitution and Section 8(1) of the N. S, Act, 1980, too obvious? "It is sometimes more important to emphasise the obvious than to elucidate the obscure"? Justice Oliver Wendell Holmes, Interestingly, law is the legislative will duly "communicated", One of the fundamental assumption is that, as a "communication" from the Legislature to one or more legislative audience, a statute is subject to the accepted standards of "communication"" in effect in the given environment. A court seeking to discharge its duty of deference to the expressions of Legislative will, is obliged to ascertain the meaning of those expressions according to accepted standards of "communication". The Legislature is the supreme law-making body and statutes are the vehicles for "communicating" its official will. The first function of the persons to whom they are addressed, including the courts, should be to find out what they mean and honour the meaning so found. Dealing with the courts" function on interpretation of statutes, A. Ross, "On Law and Justice", 138 (1959) dissects construction or interpretation into two steps. The first step is styled as the "cognitive function" or "the ascertainment of the meaning", the second step is described as the "creative function" or "the assignment of meaning". It would not be proper to say that the judiciary's responsibility remains only to discover the meaning. Interpretation of law in a law suit involving a statute, it is sometimes stated, "is transmutation of legislative dross into judicial gold". It is half-truth, as modern statutory provisions, with only sporadic help from the Court, have "life of their own". Statutory language is not so frail that it must be bolstered at every point by judicial interpretation. In my view a realistic analysis of the judicial role in relation to statutes must mediate between the two steps by recognising that a court has two different but intimately related and equally important responsibilities. First, to read the statute in its proper context to ascertain whether and how its meaning relates to the controversy at hand and, secondly, where the meaning of the statute so ascertained does not resolve the controversy, to aPPLY> adjust, or create an appropriate judicial rule to resolve it. Ascertaining the meaning of a statute is primarily an act of recognition or discovery. When the communication of the Legislature is ; Imperfectly framed or inadequately phrased, a corresponding part of the message is lost unless the reader, by logical induction or deduction, makes a compensating effort to search the relevant and sometimes competing elements to find the most plausible intended meaning. The construction of a statute in a court of law comes up when it falls within "the penumbra of uncertainty".

12. The detenu says that the word "communication" is clear and simple, it means to convey or make known or to give; by way of information the grounds of his detention. The learned Advocate General, Manipur submits on the authority of the decisions (referred in the judgment of brother Hansaria, J.) that the word "communicated" means, give, transmit, pass on, convey, to inform, announce or appraise of. No sooner the detaining authority records the grounds and hands it over to the messenger for service on the detenu, all the legal obligations on the

authority for making the "communication" are over. The act of 1982 "communication" insofar as the detaining authority is concerned must be treated as complete. In other words, the learned Advocate General means that when the vehicle of its "communication", viz., the Process Server, moves out from the office of the authority with "the communicate" for the purpose of service on the detenu, the act of "communication" is over.

13. The word "communicate" has been defined in Black's Law Dictionary (Revised 4th Edition) as "to bestow, convey, make known, recount, impart; to give by way of information."

The word "communicate" has been defined in the Shorter Oxford English Dictionary as "to give to another as a partaker; to impart, confer, transmit ... to impart (information etc.), to inform a person of, to hold intercourse or converse; to make communication..."

Perhaps the best definition of the term "communication" as a discrete aspect of human enterprise has been offered by I. A. Richards, the English literary critic and author in 1928 as : "Communication takes place when one mind so acts upon its environment that another mind is influenced, and in that other mind an experience occurs which is like the experience in the first mind, and is caused in part by that experience.

14. Mr. Advocate General wants to give the widest meaning of the term, whereas his adversary goes to the other extreme. We have ascertained the meaning of the term "communicate". Now, we are to find out the legislative will in the setting. Our function is now to assign the meaning of the term "communicate" in Section 8(1) of the N. S. Act and Article 22(5) of the Constn. Section 8(1) is extracted :

8. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making representation against the order to the appropriate Government.

(Emphasis added)

15. In our opinion, the word does not fall within the penumbra of any uncertainty it means what it states. But the learned Advocate General draws us to "the twilight zone" and submits that the constitutional and statutory functions of the detaining authority have been duly performed. The life-blood of the law is not only logic but experience as well. The provisions of Article 22(5) of the Constn. and Section 8(1) of "the Act" contain the mandatory commands "to communicate the grounds". The time imperative for such "communication" is "not later than five days from the date of detention". The sole purpose of the limitation is to offer the detenu opportunity of making an early or prompt representation. On

"communication" of the grounds, another constitutional right of the detenu springs from the date of the "communication", viz., to make an effective representation for his release. Preventive detention takes away liberty, the most cherished "Human Right", without trial, detention can be sustained on suspicion alone. Therefore, in preventive detention laws the rule of strict construction should be followed. The expression "strict construction" undoubtedly denotes a wide variety of concepts. One of such concepts is that the court will not extend the law beyond the meaning to take care of a broader legislative purpose. The purport of the argument of the learned Advocate General is that a liberal construction of the word (would) serve the broader legislative purpose. However, the learned Advocate General could not go beyond the point that the meaning of the term was evenly balanced. In our *vjgw*, the court should resolve an evenly balanced uncertainty of the meaning of an expression invariably in favour of the detenu. However, in the instant case the meaning of the word balances with sufficient force of certainty in favour of the detenu. Whether we use deductive logic or inductive logic, we find the meaning of the word "communicate" to mean actual receipt of the grounds of detention by the detenu. This is in our opinion the only rational and coherent conclusion. The detaining authority is the "communicator". The grounds of detention is "the communicate¹". The person who carries the "communicate" is "the vehicle of the communication." The object or purpose behind the transmission is to enable the communicated to comprehend and grasp the meaning of the grounds. Therefore, "the communicate¹" or the grounds must reach the hand of the detenu to enable him to make an effective representation. The process of "communication" may originate when the grounds are prepared by the detaining authority. The process of "communication"¹ continues when the communicate is being despatched or carried for service. The act of "communication" is complete only when the detenu receives the grounds. No sooner personal service is over the entire process of "communication" comes to an end. It is worthwhile to note that the legislature, in fitness of things, did not use the words "transmit" or "forward", "send" or "despatch" but a positive and affirmative word "communicate". The only meaning of the word in the setting is to make the grounds known or to apprise of the grounds, for the obvious purpose of enabling the detenu to make prompt and effective representation. In my opinion, the official communicate containing the grounds, if served on the detenu within the stipulated period of five days would be sufficient compliance with the provisions of S, 8 (1) of "the Act" r.w. Article 22(5) of the Constn. The time imperative to furnish the grounds enabling a detenu to make an effective representation, which is a constitutional obligation, has been underscored by the Supreme Court, It has been ruled that when the grounds are not communicated to a detenu within the prescribed statutory period the detention would be illegal and void for failure to afford the protection or guarantee enshrined in Article 22(5) of the Constn. The efficacy of this procedural safeguard depends upon care, caution, circumspection and sense of responsibility of the detaining authorities.

16. In the instant case the grounds were not furnished within five days from the date of the detention. There are no special or exceptional circumstances established or shown which prevented the detaining authority to communicate the grounds within five days. The cause of the breach was procrastination, laches or inattentiveness. Admittedly there is no order in writing recording any sufficient cause why the grounds could not be served on the detenu, within five days, to attract the second part of Sub-section (1) of Section 8 of "the Act".

17. If the grounds are served on the detenu within five days, it will be due communication of the grounds. If the grounds are communicated within five days and the detenu informs his inability to comprehend the grounds and ask;; for the grounds in his language, and, in the process the limitation of five days expires, the case may attract the subsequent part of Section 8(1) of "the Act". In my opinion, to cover such contingency the Legislature has extended the time limit of five days to ten days. I am of the opinion that if the grounds are served in any official language within five days from the date of detention but the detenu demands the grounds in a language with which he is conversant it would be due communication of the grounds but may not be effective communication from the point of view of the detenu. Under such contingency the detaining authority must furnish forthwith the grounds in the language desired by the detenu. If the translated copy is furnished within 10 days the case must attract the second part of Section 8(1) of the Act. In such contingency the detaining authority should record in writing the circumstances under which an effective communication could not be made within 5 days. If the grounds are served but the detenu does not demand a translated copy of the grounds in a language understandable to him, the detenu cannot take advantage of Article 22(5) of the Constn. and/or Section 8(1) of the Act, come around to urge that there was no "effective communication". If the detenu does not understand the language of the grounds transmitted to him, he must forthwith inform the detaining authority. In turn, the detaining authority must at once supply the translated copy of the grounds in the language desired by the detenu. I am of the opinion that every case shall have to be determined according to the facts and circumstances of each case. It cannot be ruled as an [absolute proposition that if "the grounds" are not furnished to the detenu within 5 days in the language with which the detenu is conversant, it would invariably make the order of detention invalid. The detenu must make a demand for such copy. If he does not object forthwith he cannot be allowed to take advantage of his own omission. Any other interpretation would make all detentions invalid on this score alone as we have as many as 15 official languages in the Eighth Schedule to the Constitution and thousands of non-official languages. However, we have not been called upon to answer the question and these are merely observations in passing.