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Court : Karnataka

Decided On : Oct-01-1996

Reported in : 1997CriLJ1582; 1997(57)ECC55; ILR1996KAR3118; 1996(7)KarLJ102

Judge : R.P. Sethi, C.J. and; S. Rajendra Babu, JJ.

Acts : [Constitution of India](#) - Articles 21, 22 and 22(5)

Appeal No. : Writ Petn. Nos. 75 to 79 of 1996

Appellant : Sakeenal Beevi and Others

Respondent : State of Karnataka and Others

Advocate for Def. : S. Vijayashankar, Advocate General, ; Sri Bannurmath, SPP and Mukunda Menon, Central Govt. Standing Counsel

Advocate for Pet/Ap. : Nagesh and ;Khetty, Advs.

Judgement :

R.P. Sethi, C.J.

1. In these petitions the Preventive Detention Order dated 7-10-95 of Zalim Shah, Ibrahim Raja Mohammad, Ismail Sheik Dawood, Khader Moideen Nagoor Gani, and Khadar Batcha Kararuddin, from whom foreign currency worth Rs. 1,61,95,908/- was recovered is sought to be quashed solely on the ground of non-

consideration of their representations.

2. In their reply the Respondent-State of Karnataka have denied the receipt of any representation allegedly sent on behalf of the detenues. However, respondent 2, Union of India, have acknowledged the receipt of representation but submitted that the same could not be decided on account of its being in Tamil language. It is contended that considerable time was consumed in obtaining the translation of the representation from the appropriate authorities. In W.P. No. 75/ 1996 and 76/1996 the representation of the detenus is stated to have been received on 15-1-1996 which was allegedly sent to the authorities for getting it translated into english. The translation in the aforesaid cases is reported to have been received on 31-5-96. Thereafter the comments were called from the sponsoring authority on 5-6-1996. The comments are stated to have been received on 17-6-96 and the representations rejected on 21-6-1996. In W.P. No. 78/1996 representation is shown to have been received on 20-2-1996 and its translation obtained on 31-5-96. After getting the comments the said representation is alleged to have been rejected on 21-6-96. The representation in respect to the detainee in W.P. No. 79/1996 is shown to have been received on 17-1-1996 and its English translation on 31-5-96. The said representation is shown to have been rejected on 21-6-96. So far as detainee in W.P. No. 77/1996 is concerned it is submitted that the Ministry of Finance, Govt. of India did not receive any representation till 8-7-96, However, a representation is stated to have been received on 25-7-96, which was rejected on 9-8-96.

3. The learned counsel appearing for the petitioners filed a memo in this Court along with RPAD postal receipt of having despatched the representation to respondents 1 and 2 on 3-12-1995. On the basis of the pleadings of the parties it is established that the representations on behalf of the detenus undisputably were filed before the respondent 2 prior to 20-2-1996 which were not disposed of till 21-6-1996. The explanation tendered by the respondents is that as the representations filed were in Tamil, time was consumed in getting the same translated through official agency to English. The details of the time consumed for getting the translation within a period ranging more than five months has not at all been explained. The argument advanced on behalf of the respondent 2 is self-

contradictory. In their replies filed in the writ petitions the respondent 2 has submitted, 'all representations have been replied immediately giving all the clarifications sought for by the detenu.' The contradictory plea raised before us cannot be reconciled. On account of inaction of some officials of the respondent 2 the detenus who are guilty of indulging in smuggling of foreign currency of worth Rs. 1,61,95,908/- are required to be set at liberty. For the fault of the officials of respondent 2 the detenus cannot be deprived of the constitutional guarantees as mandated under Arts. 21 and 22 of the Constitution. The respondent 2 would be well advised to ascertain the lapses, omissions, and negligence of its official and take appropriate actions against them.

4. Preventive detention in a democratic set up, is a serious invasion of a personal liberty and such meager safeguards as the Constitution has provided against the improper exercise of the power have to be jealously watched and enforced by the Courts in the country (AIR 1953 SC 818) (sic). Preventive detention is not a punishment for the past activities of a person but is intended to prevent a person detained from indulging in future activities which are mentioned in a particular statute governing the preventive detention of the citizen, as such detention means a complete negation of freedom of movement and of personal liberty. There is no authoritative definition of the term of preventive detention in Indian law though as description of a topic of legislation it appeared in the legislative list of the Government of India Act, 1935 for the first time and has been used in Item 9 of the List I and Item 3 of List III in Schedule 7 of the [Constitution of India](#). The expression has its origin in the language used by the Judges of the law Lords of England while explaining the nature of detention under Regulation 14(B) Defence of Realm Consolidated Act, 1914. The word 'preventive' is used in contradistinction to the word 'punitive.' It is not a punitive detention but in fact a precautionary measure A. K. Gopalan's case, : 1950 CriLJ1383 . In case of punitive detention, the person concerned is detained by way of punishment after he is found guilty of wrong doing as a result of trial where he has every opportunity to defend himself under the law of the land while preventive detention is intended to pre-empt a person from indulging in any conduct injurious to the society. The detenu is detained merely on suspicion with a view to prevent him from doing harm in future and the opportunity that he has for contesting the action initiated

against him is very limited. Having regard to the special character of preventive detention, the restrictions placed on a person under law relating to preventive detention, must consistently with the effectiveness of the detention, be minimal (AIR 1981 SC 746) : (1981 Cri LJ 306). Power to detain is primarily intended to be exercised in such rare cases where the larger interests of the State demand that the restrictions be placed upon the liberty of a citizen curbing his future activities. Such restrictions therefore, should be consistent with the object of detention and be minimum, : 1969 CriLJ1555 . The concept of personal liberty is a matter of great constitutional importance in our system of governance AIR 1968 SC 1303. The liberty of a citizen is a most precious freedom sedulously secured by the Constitution. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 of the Constitution regulates the right of liberty and movement and provides for the law regarding the preventive detention. Our Constitution perhaps is the only Constitution which makes provision in itself regarding the law of preventive detention. Article 22(5) of the Constitution provides that when any person is detained in pursuance of an order made under any law providing 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 representation against the order. Upon a combined reading and interpretation of Arts. 21 and 22 of the Constitution, it emerges that no person in this country can be detained or deprived of his personal liberty without compliance of the provisions of law and the constitutional guarantees as enshrined in Part III of the Constitution.

5. The filing of the representation is not a mere ritual. The respondents detaining or confirming authority cannot sleep over the matter and fail to perform their constitutional obligation. Whatever be the nature of the allegations the detaining authority is constitutionally bound to consider and decide the representation without any delay. The disposal of the representation assumes significance in the cases of preventive detention in view of the fact that the person detained is deprived of his civil liberties without trial in accordance with law.

6. In *Smt. Pushpa v. Union of India*, : 1979 CriLJ1314 , it was held that under Art. 22(5) of the Constitution an obligation is cast upon the authority making an order of preventive detention to communicate to the detenu the grounds on which the order has been made and should afford him the earliest opportunity of making a representation against the order. The right to make a representation imposes a corresponding duty on the detaining authority to consider the representation because the representation may furnish such information as may necessitate revocation of detention order. Preventive justice requires an action to be taken to prevent apprehended objectionable activities and as earlier noted is required to be distinguished from the punitive detention.

7. Keeping in view the power of revocation conferred by statute the Apex Court in *Raghavendra Singh v. Supdt. District Jail, Kanpur*, : 1986 CriLJ493 held that, 'the making of an application for revocation to the Central Government was part of the constitutional right a citizen had against his detention under a law relating to preventive detention. While Art. 22(5) contemplated the making of a representation against the order of detention to the detaining authority, which has to be referred by the appropriate Government under the relevant statute to the Advisory Board. Parliament has in its wisdom, provided additional safeguard against arbitrary executive action by the conferment of powers on the Central Government to revoke the detention order in accordance with provisions of the statute.

8. In *Sabir Ahmed v. Union of India* : [1980]3SCR738 , *Khatoon Begum v. Union of India*, : 1981 CriLJ606 and *Sat Pal v. State of Punjab*, : 1981 CriLJ1867 , it was held that in view of wholly unexplained and unduly long delay in the disposal of the representation by the Central Government, the further detention order of the detenu was illegal and detention order liable to be set aside.

9. The Supreme Court in *Kundanbhai Dulabhai Shaikh v. District Magistrate, Ahmedabad*, 1996 SCC (Cri) 470 : (1996 AIR SCW 1281), considered the scope of Art. 22(5) of the [Constitution of India](#), the purpose and object of making the representation, the authorities before whom the representation has to be made and the obligations of the authorities to dispose of the representation at the earliest. The Court held (at pp. 1285-86 of AIR) :

'..... it will be seen that the right to make representation against the order of detention is not only a constitutional right but a statutory right as well. Since the Constitution as also the Act specifically provide that the detenu shall be given the earliest opportunity of making a representation against the order of detention, it is implicit that there is corresponding duty on the authorities to whom the representation is made to dispose of the representation at the earliest or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning.'

The Supreme Court referred to the provisions of S. 8 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and held :

'..... The right provided under the Act has, therefore, to be treated as an extension of the constitutional right already available to a detenu under Art. 22(5). The Legislature has, in fact, given effect to the constitutional right by providing in S. 8 of the Act that the detenu shall have the right of making a representation to the appropriate Government. In *Amir Shad Khan v. L. Hmingliana*, this Court, while considering the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, observed as under (SCC p. 46, para 3) :

'This clause casts a dual obligation on the Detaining Authority, namely, (i) to communicate to the detenu the grounds on which the detention order has been made; and (ii) to afford to the detenu the earliest opportunity of making a representation against the detention order. Consequently the failure to communicate the grounds promptly or to afford the detenu an opportunity of making a representation against the order would clearly violate the constitutional guarantee afforded to the detenu by Cl. (5) of Art. 22 of the Constitution. It is by virtue of this right conferred on the detenu that the detaining authority considers it a duty to inform the appellant-detenu of his right to make a representation to the State Government, the Central Government and the Advisory Board. The right to make a representation against the detention order thus flows from the constitutional guarantee enshrined in Art. 22(5) which casts an obligation on the

authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires.' This decision was considered in *Veeramani v. State of Tamil Nadu* : 1995 CriLJ2644 and it was laid down as under (SCC Head-note p. 337) :

'The right to make representation against the detention order flows from Art. 22(5). But that article does not say to whom such representation is to be made. Such a representation must be made to the authority who has power to approve, rescind or revoke the decision. To know who has such power, the provisions of the Act have to be seen. Under the T.N. Act any detention order made by the empowered officer shall cease to be in operation if not approved within 12 days. Therefore, the Act never contemplated that the Detaining Authority has specific power to revoke and it cannot be inferred that a representation can be made to it within the meaning of Art. 22(5). Therefore, the representation to be made by the detenu, after the earliest opportunity was afforded to him, can be only to the Government which has the power to approve or to revoke.' These decisions are enough to reject the contention of the respondents.

Turning now to the main question relating to the early disposal of the representation, we may immediately observe that this Court, in a large number of cases, has already laid down the principle in clear and specific terms that the representation has to be disposed of at the earliest and if there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the Court or else the unexplained delay or unsatisfactory explanation in the disposal of the representation would fatally affect the order of detention, and in that situation, continued detention would become bad. This has been the consistent view of this Court all along from its decision in *Sk. Abdul Karim v. State of W. B.* (1969 Cri LJ 1446 (SC); *Durga Show, In re* : : (1970)3SCC696 , ; *Jayanarayan Sukul v. State of W. B.* (1970 Cri LJ 743) (SC); *Sk. Hanif v. State of W. B.* (1974 Cri LJ 606) (SC); *Raisuddin v. State of U.P.* (1983 Cri LJ 1785) (SC); *Frances Coralie Mullin v. W. C. Khambra* (1980 Cri LJ 548) (SC); *Mohinuddin v. Distt. Magistrate* : [1987]3SCR668 ; *Rama Dhondur Borade v. V. K. Saraf, Commr. of Police* (1989 Cri LJ 2119) (SC); *Aslam Ahmed Zahir Ahmed Shaik v. Union of India* (1989 Cri LJ 1447) (SC); *Mahesh Kumar Chauhan v. Union of India* (1990

Cri LJ 1507) (SC), right up to its reiteration in Gazi Khan v. State of Rajasthan (1990 Cri LJ 1420) (SC).

Almost all these decisions were again considered in State of Tamil Nadu v. C. Subramani : 1992 CriLJ3578 and the above view was reiterated, which was repeated again in K. M. Abdulla Kunhi v. Union of India (1991 Cri LJ 790) (SC) and Julia Jose Mavely v. Union of India (1992 Cri LJ 109) (SC).

In Mohinuddin : [1987]3SCR668 and Rama Dhondu (1989 Cri LJ 2119) (SC) cases, it was provided that inordinate and unexplained delay in the disposal of representation would make the continued detention of a person illegal and unconstitutional. In Devi Lal Mahto v. State of Bihar (1982 Cri LJ 2363), the continued detention was held to have become bad on account of the indifferent attitude of the Government in not attending to the representation for about 10 days.'

10. In view of the fact that the representations filed on behalf of the detenus were not disposed of expeditiously and that the explanation tendered for not deciding the representations at the earliest is not acceptable, this Court has no option but to accept the petitions and to direct the release of detenus who are alleged to be involved in the smuggling of foreign exchange worth crores of rupees. The writ petitions are allowed. The detention orders of detenus viz., Zalim Shah, Ibrahim Raja Mohammad, Ismail Sheik Dawood, Khader Moideen Nagoor Gani, and Khadar Batcha Kararuddin are set aside with a direction that they shall be set at liberty forthwith provided they are not required in any other case.

11. Petitions allowed.