

Smt. Gora Devi Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Dec-01-1982

Reported in : 1982WLN(UC)379

Judge : S.K. Mal Lodha and; S.C. Agrawal, JJ.

Appeal No. : D.B. Habeas Corpus Petition No. 1960/82

Appellant : Smt. Gora Devi

Respondent : The State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

S.C. Agarwal, J.

1. In both these writ petitions the petitioner, Smt. Gora Devi, has prayed for the issuance of a writ of the habeas corpus for securing the release of her son Virendra Singh @ Babulal s/o Jugal Singh (hereinafter referred to as 'the detenué'). The writ petition No 1840/82 was filed on 27th September. 1982 by the petitioner through he counsel Shri M.D. Purohit. The writ petition No 1960/82 has been registered on the basis of a telegram addressed by the petitioner to Hon'ble the Chief Justice of this Court.

2. By order dated 12th July, 1982 passed by the State Government of Rajasthan in exercise of the powers conferred on it under Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as 'the Act') wherein it was been stated that the State Government was satisfied that it was necessary to detain the detinue with a view to preventing him in manner prejudicial to the maintenance of public order and it has been directed that the detinue be detained in Central Jail, Jaipur. In pursuance of the aforesaid order of detention, the detinue was arrested on 25th July, 1982. After his arrest, the State Government by its communication dated 27th July, 1982 forwarded to the detinue the memorandum dated 19th July, 1982 containing the grounds for his detention along with the documents referred to in the said grounds. By the aforesaid memorandum, the detinue was informed that he could submit his representation against his detention to the Home Commissioner cum-Secretary of the Government of Rajasthan through the Superintendent, Central Jail, Jaipur. The detinue submitted a representation dated 30th July, 1982 against his detention to the Hon'ble Chief Justice of this Court. Another representation dated 6th August, 1982 was submitted by the petitioner and it was addressed to the Registrar of this Court. Both these representations were forwarded by the Registrar of this Court to the Secretary to the Government of Rajasthan cum Home Commissioner, Home Department Jaipur vide letter dated 9th August, 1982. By the communication dated 17th August, the detinue was informed that that this representation dated 30th July 1982 addressed to the High Court had been carefully considered by the State Government and had been rejected. By a similar communication dated 17th August 1982, the petitioner was informed that the representation dated 6th August, 1982 submitted by her had been carefully considered by the State Government and the same had been rejected. Another representation was submitted by the petitioner to the Secretary, Home Department to the Government of Rajasthan and by communication dated August 26/27, 1982, the petitioner was informed that the said representation had been carefully considered by the State Government and had been rejected. In the meanwhile, the case of the detinue had been referred to the Advisory Board constituted in accordance with Section 9 of the Act. The Advisory Board met on 18th August, 1982 & the detinue was produced before the Advisory Board. The detinue made of(sic)al submissions before the Advisory

Board and after taking into consideration the aforesaid submissions made by the detainee, the Advisory Board passed an order calling upon the State Government to make further enquiry into the matter and supply the correct information to the Advisory Board. The matter was adjourned to 2nd September, 1982. Thereafter, the State Government passed the order dated 4th September, 1982 wherein it has been stated that the matter of detention of the detainee had been referred to the Advisory Board & the Advisory Board had reported that in its opinion, there was sufficient cause for detention of the detainee and, therefore in exercise of the powers conferred by Sub-section (1) of Section 12 of the Act, the State Government, after taking into consideration all the circumstances, confirms the order of the detainee and, directs that the detainee be kept in detention for a period of one year i.e. till 24th July, 1983.

3. In these writ petitions, the petitioner has challenged the legality of the detainee on various grounds. A notice was issued to the respondents in writ petition no 1840/82 and in response to the said notice, a reply has been filed on behalf of the respondents.

4. It may be mentioned that prior to the filing of these writ petitions another writ petition (D.B. Civil Habeas Corpus petition No 1586/82) had been filed by the petitioner in this Court and the said writ petition was dismissed by the order of this Court dated 7th September, 1982.

5. Before dealing with the contentions urged by Shri M.D. Purohit, the learned Counsel for the petitioner we may deal with the preliminary objection with regard to the maintainability of the writ petition raised by the learned Government Advocate.

6. The submission of the learned Government Advocate was that the order dated 7th September, 1982 passed by this Court in D.B. Habeas Corpus Petition No. 1536/8 filed by the petitioner operates as res judicata in as much as in the said writ petition, the petitioner had challenged the legality of the detention of the detainee under the detention order dated 19th July, 1982 and since the earlier writ petition has been dismissed on merits by this Court by its order dated 7th September, 1982, the said order passed by this Court operates as res judicata and precludes the petitioner from re-agitating the question as to the legality of the detention of the

detenue in these writ petitions.

7. It is no doubt true that the principle of res judicata is applicable to petitions filed under Article 226 of the Constitution and the said principle is also applicable to petitions for issuance of a writ of habeas corpus. But in so far as petitions for issuance of a writ of habeas corpus are concerned the principle of res judicata does not apply with the same vigour as it applies to petitions for issuance of other writs. The principle of constructive res judicata which is applicable to petitions for issuance of writ of certiorari or mandamus is not applicable to petitions for issuance of a writ of habeas corpus. In *Lallabhai Jogibhai v. Union of India* : 1981 CriLJ288 , the petitioner before the Supreme Court was challenging the legality of his detention. He had earlier filed the petition before the Supreme Court under Article 32 of the Constitution but the same was dismissed. Thereafter, he filed another petition of habeas corpus under Article 32 of the Constitution before the Supreme Court. An objection was raised on behalf of the State that the subsequent petition filed under Article 32 of the Constitution was barred by the principle of constructive res judicata. The Supreme Court rejected the aforesaid contention and observed as under:

The position that emerges from a survey of the above decisions is that application of the doctrine of constructive res judicata is confined to civil actions and civil proceedings. This principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Article 32 of the Constitution on fresh grounds, which were not taken in the earlier petition for the same relief.

8. The aforesaid observation would equally apply to petitions filed in the High Court under Article 226 of the Constitution and the principle of constructive res judicata would not be applicable to petitions for issuance of writ of habeas corpus filed under Article 226 of the Constitution. This means that a second petition for issuance of a writ of habeas corpus would be barred only if it seeks to re-agitate matters which stand concluded by the order passed in the earlier petition. For the same reason the present writ petitions would be barred if in these writ petitions the petitioner is agitating matters which have been decided against him by order dated

7th September, 1982 passed by this Court in previous writ petition filed by her. It is, therefore, necessary to ascertain whether the questions that are sought to be raised by the petitioner in these writ petitions were also raised by her in the earlier writ petition and have been considered and decided by this Court in its order dated 7th September, 1982 passed in the said petition.

9. We have perused the earlier writ petitions filed by the petitioner as well as the order dated 7th September, 1982 in the said writ petition. In the earlier petition, the petitioner had challenged the legality of the detention of the detinue on the ground that the State Government had not disclosed the ground of detention to the detinue and had not supplied the materials relied upon in the grounds of detention. Another ground that was raised in that writ petition was that the State Government had not referred the case of the detinue before the Advisory Board constituted under Section 9 of the Act. In the said writ petition, a reply was filed on behalf of the State where in it was stated that the grounds of detention as well as the documents had been referred to the Advisory Board. After taking into consideration the aforesaid reply filed on behalf of the State, the Court by its order dated 7th September, 1982 dismissed the said writ petition on the view that the detinue had not been detained illegally. On a perusal of the present petitions, we find that many of the contentions which have been raised by the petitioner in the present writ petition were not raised in the previous writ petition, which was dismissed by order dated 7th September, 1982. In the circumstances, we are of the opinion that these petitions cannot be held to be barred by the principle of res judicata. The preliminary objection raised by the learned Government Advocate cannot, therefore be accepted.

10. We may now come to the contentions urged by Shri Purohit, the learned Counsel for the petitioner in support of these writ petitions.

11. The first contention urged by Shri Purohit was that Sub-section (2) of the Section 3 of the Act permits detention of a person for the purpose of preventing a person from acting in, any manner prejudicial to the maintenance of public order and that there exists a distinction between public order and law and order and that detention for the purpose of preventing a person from acting in any manner

prejudicial to the maintenance of law and order is impermissible under Section 3(2) of the Act. According to Shri Purohit the grounds of detention which were served on the detainee only relate to breaches of law and order and have no relevance to maintenance of public order and, therefore, the detention of the detainee is based on irrelevant grounds. In support of his aforesaid contention, Shri Purohit was placed reliance on the observations of Hidayatullah, J. (as he then was) in *Ram Manohar Lohia v. State of Bihar* : 1966 CriLJ608 wherein the learned Judge has pointed out the distinction between the three concepts, viz., 'law and order', 'public order' and 'security of the State'.

12. The various earlier decisions on the point, including the decision in *Ram Manohar Lohia's case* (2) and the observation of Hidayatullah J. in the aforesaid decision, were considered by the Supreme Court in *Wasiuddin Ahmed v. The District Magistrate, Aligarh* : 1981 CriLJ1825 and in the said case it has been observed as under:

The true distinction between the areas of law and order and public order lie not merely in the nature of (or ?) quality of the act but upon the degree and extent of its reach upon the society. The acts similar in nature but committed in different contexts and circumstances, might cause different reactions. In one case, it might affect specific individuals and, therefore, touches the problem of law and order only, while in another it might affect public order.

So, it has to be seen in the instant case whether the petitioner's activities have any impact upon the local community or to put it in words of Hidayatullah, C.J. in *Arun Ghosh's case* (supra) 'disturb the even tempo of the life of the community of that specified locality'.

In the said decision, the Supreme Court has further observed as under:

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 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.

In *Ashok Kumar v. Delhi Administration* : 1982 CriLJ1191 , the Supreme Court has observed as under:

The true distinction between the areas of 'public order' and 'law and order' lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.'

13. In view of the aforesaid decisions what has to be seen is whether the activities of the detainee as mentioned in the grounds of detention are such as to disturb the even tempo of life of the community in a specified locality. If the grounds of detention lead to such an inference, it cannot be said that the grounds have no relevance to maintenance of public order.

14. A perusal of the grounds of detention, as contained in the memorandum dated 19th July, 1982, will show that in the said grounds, it has been stated that the detainee has become habituated to loot, assaulting, molesting and misbehaving with women and has made it a part of his profession to threaten, assault and loot people and that the activities of the detainee were causing harassment and terror amongst the people of the locality and that the said activities of the detainee were, therefore, subversive to the maintenance of public order. In para (a) of the said grounds, particulars have been given of eight incidents involving serious offences committed by the detainee during the period 1st November, 1981 to 17th June, 1982. The said incidents relate to assault, looting and misbehaving with women. Many of the incidents has taken place on people who were passing on the public streets. In para (b) of the grounds, reference has been made to two cases wherein

preventive proceedings under Sections 107/151 and 110 Or.P.C. were taken against the detainee. Those cases relate to the period September, 1981. In para (c) of the grounds, reference has been made to the past criminal activities of the detainee relating to the years 1979, 1980 and 1981 in order to show that the detainee is a habitual offender. We have carefully perused the aforesaid grounds and we find that out of the eight incidents, which have been mentioned in para (a) of the grounds, incident no, (1) involving offences under Sections 450, 458, 354 and 382 I.P.C., is alleged to have taken place on 1st November, 1981 in the night, and the detainee is alleged to have entered the house of one Smt. Radha w/o Jai Kumar and had tried to misbehave with her and when she raised a cry, he showed a pistol to her and snatched her silver chain and ran away. Incident no. II involving offences under Sections 394 and 452 I. P. C. is alleged to have taken place in the night of 1st November, 1981 and the detainee along with three other persons is alleged to have entered a wine shop and assaulted the salesman Riyaj Ahmed and snatched the cash lying in the cash box and threatened him with the pistol. Incident no. III involving offences under Sections 458, 354 and 450 I. P. C. is alleged to have taken place at about 11 p.m. on 1st November, 1981 and the detainee is alleged to have entered the quarter of one Rajpal s/o Shankerlal and tried to outrage the modesty of his wife Shakuntla by showing pistol and when a cry was raised by Smt. Shakuntla and on account of the neighbours arriving at the scene by the shouts raised by Smt. Shakuntla the detainee ran away after threatening them with a pistol. Incident no. IV involving offences under Section 341 and 323 is alleged to have taken place on 4th January, 1982 and the detainee is alleged to have assaulted, with out any reason, Smt. Mikka near the crossing of Rani Bazar while she was returning after finishing her work. Incident no. V involving offences under Sections 341 and 323 I.P.C. is alleged to have taken place on 17th February, 1982 & the detainee is alleged to have assaulted Kishnaram s/o Bheraram with a hockey stick on the road near Chopra Katla while the said Kishnaram was returning to his house. Incident no. VI involving offences under Sections 394, 34 & 365 I.P.C. is alleged to have taken place on 24th February, 1982 and the detainee along with two other persons is alleged to have assaulted Shri Pursottam Lal Sharma when he was going in his car in the industrial area of Bikaner and had snatched a sum of Rs. 505/- cash and the

golden ring from his possession. Incident no. VII involving offences under Sections 323 and 341 I. P. C. is alleged to have taken place on 23rd April, 1982 and the detainee is alleged to have assaulted Subhas chand near D. M. office, Bikaner and had snatched Rs. 82/- from him. Incident no. VIII involving offences under Sections 394 and 323 I. P. C. is alleged to have taken place on 17th June, 1982 and the detainee is alleged to have assaulted Laxaminarain and had snatched Rs. 1,000/- cash and one golden ring from his possession. It may also be mentioned that out of the aforesaid eight incidents referred to in para (a) of the grounds, report for five incidents, namely, incident nos. I,III,IV,VI and VII have been registered at Police Station Kote Gate, Bikaner and they relate to that locality. Taking into consideration the aforesaid grounds in the light of the decisions of the Supreme Court in Wasiuddin Ahmed's case (3) and Ashok Kumar's case (4), we are of the opinion that the activities of the detainee were such as to disturb the even tempo of life of the community of the locality Police Station Kote Gate, Bikaner and nearby areas and, therefore, it cannot be said that the incidents mentioned in ground (a) of grounds of detention only relate to maintenance of law and order and have no relevance to maintenance of public order. On the basis of the aforesaid incidents, it can reasonably be said that the activities of the detainee involving assaulting, looting and misbehaving with women had created an atmosphere of terror amongst the people of the locality. Ground (b) refers to the proceedings under Section 107/151 Cr.P.C. and Section 110 Cr.P.C. initiated against the detainee on 21st September, 1981 and 1st September, 1981 respectively. Ground (c) refers to the Criminal Cases in which the detainee was involved in the past to show that he is a habitual offender, Grounds (b) and (c) have to be read in conjunction with ground (a) and if these are considered it cannot be said that the aforesaid grounds have no relevance to the maintenance of public order and are connected with maintenance of law and order only, The first contention urged by Shri Purohit cannot, therefore, be accepted.

15. The next contention urged by Shri Purohit was that some of the grounds mentioned in the grounds of detention are non-existent and, therefore, the detention of the detainee cannot be upheld. In this regard it may be observed that in the writ petition, the petitioner has not specified as to which of the grounds mentioned in the grounds of detention were non-existent. During the course of

arguments, Shri Purohit has invited our attention to the copies of the orders annexed as Annexures 10,11 and 12 to writ petition no. 184/82 and has submitted that the aforesaid orders show that the detainee had been acquitted in the cases mentioned in those orders and that, the aforesaid cases were no longer pending on the date of the passing of the order of detention and, therefore, the grounds relating to the aforesaid cases were non-existent. We have carefully perused the grounds of detention with reference to the orders (Annexures 10,11 and 12) but we find that the said orders do not relate to any of the eight cases referred to in para (a) of the grounds of detention. The order Annexure 10, relates to Case No. 1095/81 under Sections 323 and 341 I.P.C. but in para (a), the incidents involving offences under Sections 341 and 323 I.P.C. relate to the year 1982 and, therefore, the said order does not relate to any of the cases mentioned in para (a). The order, Annexure 11, relates to Case No. 187/80 in respect of offence under Sections 451/323 I.P.C. but none of the cases mentioned in para (a) relate to a case of 1980. Similarly the order, Annexure 12, relates to Case No. 95/80 in respect of offences under Sections 323 and 341 I.P.C. but para (a) of the grounds of detention does not contain any reference to any cases of 1980. Reference has been made to some case under Sections 323/341 of the year 1980-81 in para (c) of the grounds of the detention. But those illustrations are not in respect of pending cases. They only refer the past criminal activities of the detainee for the purpose of showing that he is a habitual offender. The fact that some of the cases mentioned in para (c) had been compromised and the detainee had been acquitted in them before the passing of the order of detention, would not mean that the ground of detention based on the aforesaid cases, namely, that the detainee is a habitual offender, is non-existent. In the circumstances, the contention urged by Shri Purohit that some of the grounds of detention, were non-existent, cannot be accepted.

16. The third contention urged by Shri Purohit was that the detainee was denied the right of making an effective representation against his detention in as much as he was not supplied with the Court Record numbers of the cases which were pending against him in the courts and to which reference has been made in the grounds of detention and in the absence of the aforesaid Court Record numbers of the cases, it was not possible for the detainee to ascertain the present position of

those cases in the various courts where they were pending. In our view there is no merit in the aforesaid contention. The demand for obtaining the Court record numbers of those cases was made for the first time in the letter dated 19th September, 1982 addressed by the counsel for the petitioner to the District Magistrate, Collector, Bikaner. Before the aforesaid letter, no grievance in this regard was made either by the detainee nor the petitioner that as a result of the non-supply of the Court record numbers of the cases pending in the various courts, the detainee and the petitioner were unable to make an effective representation. On the other hand, the detainee as well as the petitioner made various representations which shows that the detainee as well as the petitioner were fully aware of the cases, which have been referred to in the grounds of detention. It may also be observed that all the relevant documents relating to the aforesaid cases were supplied to the detainee along with the grounds of detention. In the circumstances, we are unable to hold that the mere non-supply of the court record numbers of the cases referred to in the grounds of detention has resulted in denial the right of making an effective representation to the detainee.

17. Another contention that was urged by Shri purohit was that the order dated 4th September, 1982 where by the State Government confirmed the order of detention of the detainee was passed even though the opinion of the Advisory Board had not been received till then. In our view, the aforesaid contention is also without any substance. The said order dated 4th September 1982 mentions that the matter had been referred to the Advisory Board and that the Advisory Board had reported that there was sufficient cause for the detention of the detainee. There is nothing in the writ petition to show that the aforesaid recital in the order dated 4th September 1982 is false. On the other hand, the writ petition itself proceeds on the basis that the Advisory Board had reported that there was sufficient cause for the detention of the detainee because the aforesaid report of the Advisory Board had been challenged by the petitioner in the writ petition. In the circumstances, we are unable to accept the contention of the petitioner that the report of the Advisory Board had not been obtained before the order dated 4th September, 1982 confirming the order of detention of the detainee was passed.

18. Shri Purohit has lastly contended that in view of the fact that the matter was pending before the Advisory Board, the State Government should have waited for the report of the Advisory Board and that the rejection of the representations submitted by the detainee and the petitioner during the pendency of the matter before the Advisory Board renders the detention of the detainee illegal. We are unable to accept the aforesaid contention. In *S.K. Abdul Karim v. State of West Bengal* : 1969 CriLJ1446 , the Supreme Court has considered the provisions of clause (5) of Article 226 of the Constitution and has laid down as under:

But it is a necessary implication of the language of Article 22(5) that the State of Government should consider the representation made by the detainee as soon as it is made, apply its mind to it and, if necessary, take appropriate action. In our opinion, the constitutional right to make a representation guaranteed by Article 22(5) must be taken to include by necessary implication the constitutional right to a proper consideration of the representative by the authority to whom it is made. The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality. It is, therefore, not possible to accept the argument of the respondent that the State Government is not under a legal obligation to consider the representation of the detainee or that the representation must be kept in cold storage in the archives of the secretariat till the time or occasion for sending it to the Advisory Board is reached. If the view point contended for by the respondent is correct, the constitutional right under Article 22(5) would be rendered illusory. Take for instance a case of detention of a person on account of mistaken identity. If the order of detention has been made against A and a different person B is arrested and detained by the police authorities because of similarity of names or some such cause, it cannot be reasonably said that the State Government should wait for the report of the Advisory Board before releasing the wrong person from detention. It is obvious that apart from procedure of reference to the Advisory Board, the State Government has ample power under Section 13 of the Act to revoke any order of detention at any time. If the right of representation in such a case is to be real and not illusory, there is a legal obligation imposed upon the State Government to consider the representation and to take appropriate action thereon. Otherwise the right of representation conferred by Article 22(5) of the Constitution would be rendered nugatory.

The constitution of an Advisory Board for the purpose of reporting whether a person should or should not be detained for a period of more than three months is a very different thing from a right of consideration by the State Government whether a person should be detained even for a single day. The obligation of the detaining authority to consider the representation is different from the obligation of the Advisory Board to consider the representation later on at the time of hearing the reference. It follows, therefore, that even if reference is to be made to the Advisory Board Section 9 of the Act, the appropriate Government is under legal obligation to consider the representation of the detainee before such a reference is made.

19. In *Pankaj Kumar v. State of West Bengal* : [1970]1SCR543 , the law laid down in *S.K. Abdul Karim's case* (5) was reaffirmed and the Court rejected the contention that the obligation to consider the representation by the State Government exists only when the representation has been received before the matter has been referred to the Advisory Board and not after the detainee's case was referred to the Advisory Board. The Supreme Court held that the obligation of the appropriate Government to afford to the detainee the opportunity to make a representation and to consider that representation is distinct from the Government's obligation to constitute a Board and to communicate the representation amongst other materials to the Board to enable it to form its opinion and to obtain such opinion. In the said decision, it has been laid down that the detainee has a constitutional right and the State Government is under a constitutional obligation to consider the representation of the detainee irrespective of whether it was made before or after his case was referred to the Advisory Board and that if the State Government failed to discharge the said constitutional obligation, the detention would become invalid. To the same effect is the law laid down by the Supreme Court in *Jayanarayan Sukul v. State of West Bengal* : 1970 CriLJ743 .

20. In the present case, the State Government, in dealing with the representation that was submitted by the detainee and the petitioner, while the matter had been referred before the Advisory Board, has only acted in accordance with the law laid down by the Supreme Court in the aforesaid decisions. It cannot, therefore, be

said that the action of the State Government in passing orders on the representations submitted by the detenue and the petitioner renders the detention of the petitioner illegal.

21. No other contention was urged by Shri Purohit.

22. Thus, none of the contentions urged by Shri Purohit merits acceptance.

23. D.B. Habeas Corpus Petition No. 1840/82 filed by Smt. Gora Devi for the release of Virendra Singh Babuda is dismissed.

24. As D.B. Habeas Eorpus Petition No. 1840/82 has been dismissed D.B. Habeas Corpus Petition No. 1960/82 registered on the basis of the telegram received by Hon'ble Chief Justice by name and treated as habeas corpus petition also stands dismissed.

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