In Re: V. Venkataraman

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Court : Chennai

Decided On : May-19-1948

Reported in : 1949CriLJ748

Judge : Yahya Ali, J.

Appellant : In Re: V. Venkataraman

Judgement :
ORDER

Yahya Ali, J.

1. This is an application by V. Venkataraman, an advocate of this Court who has been working in the office of Messrs. Row and Reddy, advocates, Madras, under B. 491, Criminal P. 0., for his release from detention. The application is supported by an affidavit from Mr. V. G. Row, senior partner of the advocates' firm, and it is stated therein that the detenu was arrested at his residence at Thyagarayanagar at about 6 a.m. on 1st April 1948 and was now being detained in the Vellore Central Jail. It is also alleged in that affidavit that from his house he was first taken to the Saidapet police lock-up and kept there until 6 p.m. on 1st April and it was only at 6-30 p.m. on that day that he was removed to the Madras Penitentiary where he was detained until 8th April when he was transferred to the Vellore Sub jail When he was at the Saidapet police look-up it would appear that he asked for the arrest and search warrants to be shown to him, under whose authority he was

arrested and his house searched. No such document was shown to him, but he was informed that those acts were done under the provisions of the Madras Maintenance of Public Order Act, 1947. A similar request was repeated when the detenu was in the Penitentiary, and the Superintendent read out the order of detention which was signed by the Commissioner of Police and dated 1st April 1948. It is emphatically averred by Mr. Row in his affidavit that since August 1947 the detenu has not been- an office-bearer or a member of any Trade Union or in any way connected with such organisations and that he has been doing exclusively professional work in the various Courts in the city and has not been doing anything prejudicial to the maintenance of public order in any way. A definite suggestion was made by the deponent in that affidavit that the Commissioner of Police, Madras, passed the order only on 1st April 1948 and after the arrest of the petitioner and not before, and that the Commissioner could not 'have had any reasonable grounds for suspecting that the detenu was acting in a manner prejudicial to the maintenance of public order.

2. A affidavit has been filed on behalf of the Provincial Government which states that the petitioner is a leading communist of Madras, that the order of detention was issued by the Commissioner on 1st April 1948 and that on the same day he intimated to Government the fact of issue of the order of detention along with the grounds for detention. These grounds were des-patched on 24th April 1948 to the Central Jail, Vellore, for service on the detenu. The grounds Bet out in that communication are as follows:

He is a member of the District Commit tea of the Communist Party of India, Madras. He has been permanently associating himself with all Communist nativities. He was the President of the Corporation Labour Union and organised a strike of the conservancy workers in August 1946. He induced the workers to make exaggerated demands and was responsible for the rejection of the reasonable terms offered by the Corporation for the settlement of the strike. When the strike was launched at his instigation the strikers committed acts of intimidation and violence and obstructed loyal workers. A number of persons were arrested and prosecuted by the police in this connection. He organised a number of meetings and processions, also issued leaflets and handbills which contained

false propaganda and which were calculated to incite violence towards the Police and resistance to their authority. He organised a general strike in sympathy with the conservancy workers on strike on 22-8-1946 and a prohibitory order was issued on that day. In defiance of the ban he organised a meeting in Triplicane Beach which was dispersed by the Police by the use of tear smoke. He takes a keen interest in the party activities.

His being at large is considered prejudicial to the public safety and the maintenance of public order.

3. This application was heard by me on the 4th and 5th May and, in view of the contentions, put forward on behalf of the detenu I considered it necessary to examine the Commissioner of ' Police on certain points materially connected with the circumstances in which the order of detention was issued. The case came up this day for me examination of the Commissioner, but in the meantime some additional grounds were served by the Provincial Government on the detenu which are dated 8th May 1948, and they are to the following effect:

He attended secret Communist classes for the Leader Cadre in September 1947 during which written instructions were distributed to all the leaders who attended. Arrangements were made for intensive propaganda for the increase of wages of workers in factories and workshops, to fix their hours of work and also to see that workers do only that much of work which is required of them according to their pay and designation. This class also decided to do intensive propaganda among the Muslims and gather as much support from them as possible. The position on the railways was considered and measures thought out to bring the impending strikers to ft successful conclusion.

By virtue of his position as office secretary of the Assembly Front, he has had the opportunity of working behind the scenes and coordinating the work of the party M. L. As. and given necessary publicity to the party. This probably accounts for his not coming to outside notice.

He is an important member of the patty which is now out for violence and is engaged in subversive activities.

I may before proceeding further state that Mr. Bow also filed a reply affidavit which does not materially add to the relevant averments contained in the first affidavit.

4. The main contentions put forward on behalf of the petitioner are the following: It is argued that in the present case the arrest and detention of the petitioner preceded the statutory satisfaction that is contemplated in Section 2 of the Act. Next it is urged, so far as the earlier grounds are concerned, that a scrutiny thereof would show that all of them related to past acts, and that in view of the categorical statement made by Mr. Row, the senior partner of the firm, that the detenu had ceased all his connections with the Trade Union and was wholly devoting himself to professional work, there is nothing to show that there was any continuity in the prejudicial conduct of the detenu so as to attract the application of the Act. Yet another ground put forward is that the various acts referred to in the communication of the Government formed part of certain previous proceedings under the corresponding Ordinance and those proceedings having subsequently been dropped and the detenu released there is no justification to base a fresh action upon the same grounds. Lastly two objections of a technical nature were also put forward that the order containing the grounds was not signed by the Chief Secretary and that the Act having been first passed to be in effect for one year and having been subsequently under powers vested in that behalf extended for another year, the original delegation of powers of the Provincial Government to the Commissioner did not remain in force and that during the extended period of the Act in the absence of a further notification extending the period of the delegation, the Commissioner had no power to make an order of detention.

5. I may immediately dispose of the last two technical objections. It would appear that the copy of the grounds which was served through the Superintendent of the Central Jail on the detenu was signed by some other officer for the Chief Secretary. A copy of the order actually passed by the Provincial Government and placed before me purports to have been signed by the Chief Secretary himself. Even in the absence of any proof that the actual individual who signed the copy which was served on the detenu bad the authority to do so, I must hold applying the maxim omnia prcessumun-tur rite et solenniter ease acta that it must be presumed in the absence of specific evidence to the contrary that the Chief

Secretary who under the business rules is the competent authority to sign orders did so in the present case.

6. Under sub-c. (4) of s. l, Madras Maintenance of Public Order Act, 1947, it is provided that the Act shall remain in force for a period of one year, but power is given to the Provincial Government by notification from time to time to extend the continuance of the Act for a further period or periods not exceeding one year in the aggregate, if in their opinion it is expedient be to do. The Act came into force on 12th May 1947 and was extended for a further period of one year from lath March 1948, by G, 0. Ms. No. 446 Public (General) dated 27-2 1948, published in the Port St. George Gazette dated 3rd March 1948. Under Section 16 of the Act

The Provincial Government may, by order, direct that any power or duty which is conferred or imposed on them shall in such circumstances and under such conditions, if any, as may be specified in that direction, be exercised or discharged by any officer or authority subordinate to the Provincial Government.

In exercise of this power, the Provincial Government by a. o. Ms. No. 907, Public (General), dated 2ist March 1947 directed that the powers conferred on the. Provincial Government by Section 2 (1) (a) of the Act shall be exercised also by all the District Magistrates and by the Commissioner of Police, Madras, within their respective jurisdictions. It has to be noted that the delegation is not confined to any specified period ; it is co-extensive with the duration of the Act. The legal as well as the natural effect of the extension of the duration of the Act for one year beyond 12th March 1948 is automatically to extend the duration of the delegation made under the terms of Section 15. Both the technical objections therefore fail.

7. Of the three general objections, the first to my mind is of some importance. Before consider-ing it, it is necessary to set out the material pro-visions of the Act, The purpose of the Act as set' out in the preamble is that

for the maintenance of public safety and to prevent' and put down disorders involving menace to the peace and tranquillity of the Province, it is necessary to provide for preventive detention.

The pivotal provision of the Act so far as is; material to the point at issue in this case is contained in a. 2 (i) (a):

2. (1) The Provincial Government, H satisfied with respect to any particular person that he is acting or about to act in any manner prejudicial to the public safety or the maintenance of public order, and with a view to preventing him, it is necessary so to do, may make an order(a) directing that he be detained.

I have already referred to Section 15, under when these power can be delegated to certain officers and to the notification issued under that Sub-section (2) of Section 2, provides that whenever any such officer in exercise of the delegated power makes an order of detention he should forthwith report the fact to the Provincial Government and should send with it the grounds on which the order was made and other particulars which, in his opinion, have a bearing on the necessity for or expediency of the order. Section 3 (l) is important and may be fully set out:

Where an order in respect of any person is made by the Provincial Government under Sub-section (1) of Section 2 or where any such order is made by any officer authority subordinate to them, after receipt of the report specified in Sub-section (2) of that section, the Provincial Government shall communicate to the person affected by the order so far a3 such communication can be made without disclosing the facts which they consider it would be against the public interest to disclose, the grounds on which the order has been made against biro and such other particulars as are in their opinion sufficient to enable him to make, if he wishes, a representation against the order ; and such person may, within such time as may be specified by the Provincial Government, make a representation in writing to them against the order and it shall be the duty of the Provincial Government to inform such person of his right of making such representation and to afford him opportunity of doing so.

After the procedure embodied in this sub-section is adopted, it is open to the detenu to submit a representation to the Provincial Government who must place it before the Advisory Council constituted under sub-a. (3) of Section 3 and the Advisory Council is empowered to examine the records and submit its report to the

Provincial Government. After receiving the report and considering it, the Provincial Government may confirm, modify or cancel the order made by them under Sub-section (l) of Section 2.

8. To go back again to the precise language of Section 2 (l) (a), it is important to consider that the fundamental basis upon which the exercise of power by the Provincial Government under this Act rests is that the Provincial Government should be satisfied with respect to the particular person that he is acting or about to act in any manner prejudicial to the public safety or the maintenance of public order and that it is necessary to detain him for the purpose of preventing him from so doing. It is only when these two conditions are satisfied that the Provincial Government, or, under the delegated power, the respective authority may make an order directing that a particular person may be detained. It has been held in an earlier decision given by a Bench of this Court under this Act that the word 'satisfied' in sub.s. (l) of Section 2 must be read as meaning 'reasonably satisfied'. It cannot import an arbitrary or irrational state of being satisfied. If further authority were needed for such a position, there is the dictum of Lord Wright in Liversidge v. Sir John Anderson 1942 A. C. 206 : 1941 3 ALL E. R 338. Vide also in In Be-Ex parts Greene, (1942) 1 K. B. 87, Sackstader ex parte, (1918) 1 K. B. 678 : 87 L. J. K. B. 608, It means as has been again laid down in a number of decisions which is hardly necessary to refer to, which have recently been delivered under the corresponding Provincial Acts, that the satisfaction must be honest, careful and deliberate, arrived by the detaining authority after exercising due care and caution. The moat important limitation upon the essential jurisdiction of the executive in exercising the powers under such a sweeping enactment is that there should be no fraud or abusive exercise of the power conferred thereby and that the powers should not, to any extent, be exceeded. In other words, the power should be exercised for the purpose contemplated by the Act and should come strictly within the limits, scope and ambit of the enactment. It has to be remembered that the Act avowedly commits tremendous inroads upon .the liberty of the subject, and commensurate with that authority it is essential on the part of the executive that they should realise that it is in essence and in substance, a preventive and not a punitive jurisdiction and that detention should not be ordered or continued for the purpose of punishing a person for acts done in the past but wholly and solely for

the purpose set out at the forefront of the Act of preventing him from acting in any manner prejudicial to the public safety or the maintenance of public order.

9. Having said this, it is also necessary for me to set out that if these fundamentals are satisfied, the next question for the Court is to gee whether the requisite procedure and formalities embodied in B. 3 and other provisions of the Act in the matter of furnishing the grounds and particulars and of the nature of those grounds and particulars have been duly observed within a reasonable time. In several cases that have come to my notice, I have found that until an application was made in Court no grounds had been given at all, and only after notice of the application went to the concerned authorities the grounds were despatched. In yet another case I found that on the Court observing that the grounds were not sufficient, adjournments were taken and in the meantime additional grounds were served. When the existence of bona fides was the sine qua non of such a powerful jurisdiction as the Act confers, it is necessary that such inordinate delays in the discharge of the primary duty of serving grounds are to the utmost extent possible avoided.

10. I have in the preceding paragraph indicated the scope of limitations within which the executive can act under this enactment ; but if those restrictions are duly observed by the Provincial Government or the delegated authority, the function of the Court is extremely limited. Under Section 16 (l) of the Act it is specifically provided that no order made in exercise of any power conferred by or under this Act or deemed to have been made under this Act shall be called in question in any Court. If, therefore, the order made is one that can be said to have been duly made under the Act and the requirements of Section 2 (l) are scrupulously carried out and the procedure in Section 3 is properly observed, then the function of the Court virtually ceases, because it is not left to the Court either to question the truth of the grounds upon which the detention was ordered or to judge their reasonableness or sufficiency. These are matters vested by the Act exclusively in the authority which is empowered to make the order of detention. The only function of the Court in such cases is to examine the records, and if grounds have been served, to scrutinise those grounds to ascertain the exact state of mind of the officer who made the order of detention with a view to ascertain whether he was in

truth reasonably satisfied in the manner required under the Act. The only purpose of the enquiry by the Court in such matters can be to make, be to speak, a subjective analysis of the mind of the officer at the time and not to probe into the validity or correctness of adequacy of the reasons which impelled him to direct the detention of the particular individual. It is not necessary to refer to the decided cases which have dealt with the various problems arising under such enactments, but the principles that I have summarised in the proceeding paragraphs, in my opinion, represent the effect of the respective provisions of the Act and the respective interpretations placed thereon by the various High Courts in this country.

11. Having set out the principles governing the application of the Act to individual oases, it remains for me to consider how far the various objections taken on behalf of the detenu in this case can be upheld. The main contention is that the authority who directed the detention of the -petitioner did not satisfy himself as required under the Act before the actual detention was affected, but that he did so subsequently. As I have already stated, Venkataraman was arrested at 6 a. m. on let April 1948 at his residence and was taken immediately to the Saidapet police station where he was kept until the evening when he was removed to the Madras Penitentiary. It was manifest from the start that no written order of detention had been issued before or by the time of his arrest. For the purpose of clarifying this position and also to ascertain whether the detaining authority was satisfied that it was necessary to direct Venkataraman's detention for the purpose of preventing danger to public security, I required the presence of the Commissioner of Police and he was examined before me yesterday. He has stated that at 11.30 p. m. on the Bight of 31st March-1st April he examined the records concerning the detenu and was satisfied that unless be was detained, there would be danger to public safety. He stated that he issued oral orders of detention at four in the morning, some two hours before the actual arrest was made. He, however, frankly conceded that the written order of detention was only drawn up by him at 11 a, m. in his office and forthwith communicated to the Provincial government with the grounds as required under Section 2 (1) of the Act. Upon these facts, the question arises whether the absence of a written order of detention at the time of arrest vitiates the detention and renders it illegal. After having bestowed the moat

thoughtful consideration upon this matter, I am of opinion that the absence of a written order does not have the effect contended for. Stress is laid upon the word 'make' occurring in Section 2 (1), and the argument is that when the statute requires the authority to make an order it is implicit that the order should be made in writing and not orally. It is not in every instance that the expression 'make' carries by implication the concept of writing formally recorded. That would depend entirely upon the context in which the word is used. For an illustration, if the expression is 'make ft promissory note' or 'make a conveyance' the necessary implication must be that the promissory note or the conveyance should be in writing, because there cannot be an oral promissory note or conveyance. In another context, the word 'make' may likewise involve 50 Cri. L. J. 95 the idea of oral making. As would appear from Straud's Judicial Dictionary 'to make' involves a conscious act on the part of the maker, but it does not necessarily connote that there should be a formal act of writing. Under the scheme of the Act, there can be no doubt that it is not primarily concerned with orders but with the preventive detention of persona whose detention in the view of the Provincial Government is necessary in order to prevent them from acting in any manner prejudicial to the public safety and the maintenance of public order. The order required to be made under Section 2 (l) is a mere machinery through which the object of the Act, namely, the detention of the person concerned, is carried out, and as has been held by a Pull Bench of the Patna High Court in Murat Patwa v. Province of Bihar : AIR1948 Pat135 , it is that detention that becomes illegal if any of the vitiating circumstances exist. In any event, there cannot be any objection so far as the detention order made at 11 a. m. on 1st April 1948 is concerned.

12. The moat substantial part of the detenu's case is that the Commissioner of Police was not, in fact, or in truth, satisfied as required under the Act before he made the order of detention-. Such a contention is not now open to the detenu in view of the categorical statement made by the Commissioner of Police that he examined the records before he made the order and that on such examination he was satisfied that it was necessary to direct the detention of the particular person for preventive purposes. I find therefore no substance in the objection that in the present case the prerequisite of detention, namely, 'satisfaction' did not exist and that it came into existence after the detention had, in fact, been effected. As

already stated the principle is clear that when the authority nominated by the Legislature is satisfied it is not for the Court to examine the grounds to deter-mine whether they are adequate to support the order of detention. It cannot be contended that there was a colourable exercise of the power on the part of the Executive in this case or that it was exercised for an ulterior purpose unconnected With the public security or order.

13. The next objection is that the order is based exclusively upon the past acts, there being nothing to show that there was any continuity of those acts up to the time of detention. Here again, the principle is perfectly clear, and the evidence is also perfectly clear. The Commissioner has stated definitely that he examined the records and was satisfied from events leading to the date of detention. It is essential in my view, that there should be such continuity. Otherwise, the detention would become vindictive, if not punitive, which is not the legitimate purpose of the Act. In the present case, there can be no doubt that be far as the Commissioner was concerned he was satisfied that up to the time of detention the activities of the detenu were such that it was necessary to keep him in detention in the interests of public safety. The acts which established the continuity must have occurred after the date line which in this case is the date when the Aot came into force. From a perusal of the original as well as the supplemental grounds I am not in a position to discard the statement of the Commissioner that there was continuance (of ?) activity on the part of the detenu, In the original grounds, no doubt the only concrete incidents that were referred to were the events of August 1946, although there were general statements to the effect that he was a member of the District Committee of the Communist party and that he had been prominently associating himself with all Communist activities and was taking keen interest in the party activities. That matter has been amplified in the grounds subsequently served where it is stated that in September 1947 he attended secret Communist classes for the Leader Cadre during which written instructions were distributed to all the leaders who attended. This is after the Act crime into force. It is also stated in that connection that certain arrangements were made for intensive propaganda among the Muslims in order to gather as much support from them as possible. Measures were thought out to bring about strikes in the railways and by virtue of his position as office secretary on the Assembly Front he had also opportunities of working be-

hind the scene and coordinating with the Party M. L. As.

14. It was strenuously argued with regard to the additional grounds firstly, that though it cannot be said that the Provincial Government had no right to file supplemental grounds it was not fair on their part to do as after the petition had been heard in pArticle and secondly that at the were the additional grounds only showed that the detenu had opportunities to act or was likely to act, and they did not show as required under the Act that he was acting or was about to act. With reference to the first objection I entirely agree with the learned Counsel for the petitioner that it is not ordinarily desirable that after a case is heard and the infirmities are exposed, an authority in the position of the Provincial Government should try to make up the defects by nerving supplemental grounds; but ex concessis, it is not illegal. With regard to the second objection, I Bee no substance whatever in it. The expression 'about to act' necessarily connotes the having of an opportunity to act and having the necessary inclination and tendency to act in a particular manner. Whether a parson is about to act or not has to be determined with reference to his general attitude, his previous record and his tendency at the moment and the supplemental grounds provide the necessary material for holding that even though the incidents of 1946 have no direct bearing they show that the attitude then conceived was continuously held and was manifested on several occasions and that the same attitude persisted even at the time of detention.

15. The only other point that remains is as regards similar orders having been served in, 1947 on the detenu and having subsequently been withdrawn against him. The doctrine of autrefois acquit does not apply to this case, and it is not the contention that there is any estoppel arising in connection with the general amnesty when the detenu was once released. The real point for decision is whether from his behaviour before and about the time of detention there was reason for the authority concerned to reach the conclusion that he was about to act in a prejudicial manner. I cannot say in this case, especially in view of the definite evidence given by the Commissioner, that the satisfaction did not either exist or that, if it existed, it was not reasonable.

16. The application is dismissed.