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Court : Chennai

Decided On : Apr-21-1999

Reported in : 1999(2)CTC175

Judge : N. Dhinakar, and; V. Bakthavatsalu, JJ.

Acts : Constitution of India -- Article 22; Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Immoral Traffic Offenders and Slum Grabber Act, 1982 (TADA) -- Sections 10, 11; Tamil Nadu Prohibition Act, 1937 -- Sections 4(1) r/w, 4(1-A)

Appeal No. : Habeaus Corpus Petition No. 1120 of 1998

Appellant : Devarajan

Respondent : The State Rep. by the Secretary to Government, Prohibition and Exercise Dept., Fort St. George,

Advocate for Def. : Mr. S. Anabalagan, Additional Public Prosecutor, Adv.

Advocate for Pet/Ap. : Mr. S. Kumar, Senior Counsel for ;Mr. D. Veerasekaran, Adv.

Judgement :
ORDER

Judgment pronounced by V. Bakthavatsalu, J.

1. The petitioner is the friend of the detenu, viz., Olimaran who has been detained by the second respondent under Act 14 of 1982 after identifying him as 'boot-legger'. The detenu had come into adverse notice of the authorities in four cases. It is not necessary for us to stale the facts in detail since the writ will have to be allowed on the ground of non- furnishing the proper translation copies to the detenu.

2. It is alleged in the ground case that while the detenu was found selling distilled arrack, the police arrested him and recovered the contraband on 23.6.1998 and that after the seizure of the contraband, the remaining arrack was destroyed. Thereafter, a case was registered in Cr.No.365 of 1998 under Section 4(1)(i) r/w, 4(1-A) of the Tamil Nadu Prohibition Act, 1937. Basing upon the materials, the second respondent has come to the conclusion that the detenu is a boot-legger and thereupon, the impugned order is passed.

3. Mr.S.Kumar, Learned Senior Counsel appearing for the petitioner contended that the detenu was not. furnished with the correct and proper translation copy of the order. To substantiate the same, he relied upon paragraph 6 of the detention order wherein it is stated that any representation that is made by the detenu will be considered by the Government and will also be placed before the Advisory Board for consideration of his case under Section 10 of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) therein after referred to as 'the. Act'). The detenu was further informed in the above paragraph that he is entitled to be heard in person by the Board. But, in the Tamil version of the above detention order, it is stated that the representation sent by the detenu will be duly considered by the Government and that the detenu has get right to be heard by the Advisory Board. The relevant paragraph reads thus:

The fact that representation made by the detenu to the Government will also be placed before the Advisory Board is significantly absent in. the Tamil version of the order. It is only stated that the detenu has got a right to be heard before the Advisory Board about her case. It is, thus, apparent that the detenu was not

intimated that his representation sent to the Government will be placed before the Advisory Board along with his case. It is contented by the learned counsel that the above omission is fatal to the case and as such, the order of detention is vitiated.

4. Learned Counsel for the petitioner relied upon the judgment of a Division Bench of this court in HCP No.1184 of 1997, wherein the Division Bench to which one of us (Bakthavatsalu,J.) was a member had occasion to consider the similar question. On comparing the English Version of the order with the Tamil Version, the Division Bench has held that in the Tamil version of the order, the fact that any representation that is made by the detenu will also be placed before the Advisory Board has been omitted and hence, it was held by the Bench that it would be sufficient to held that the detention order is vitiated. The above judgment of the Division Bench has been subsequently followed by the same Bench in HC No.6 of 1998 dated 30.4.1998. Another Division bench of this court consisting of V.S.Sirpurkar and V.Kanagaraj, had occasion to consider similar question in HCP 899 of 1997. The Bench followed the ruling laid down in HCP 1184 of 1998. The observation or the decision rendered is as follows:

'Learned Counsel for the state, however, points out that in fact, the said representation was put before the Advisory Board. We are afraid that would not suffice. If the English Version of the grounds of the detention mentions in terms of Section 10 of the act that representation would be placed before the Advisory Board , then, it was also imperative that the Tamil Version of the grounds of detention should also contain the assurance to the effect that his representation would be put before the Advisory Board. Omission of this assurance in the Tamil Version of the grounds of detention, in our opinion, would be fatal to the detention. This view was taken by a Division Bench of this court in HCP No.1184 of 1997 by judgment dated 26.3.1998. We concur with the same.'

5. Learned Additional public prosecutor contented that the view taken by the earlier Division Bench was not followed in subsequent case. In support of the same, he relied upon a judgment of a Division Bench in HCP No.679 of 1998. In the above case, identical question came up for consideration. On a perusal of the English Version of the detention order and its Tamil Version, the Division Bench

did not agree with the contention of the detenu that the Tamil Version of the detention order does not correctly reflect the English Version. Learned Additional Public Prosecutor drew our attention to the Tamil version of the detention order which was the subject matter in the above case. Relying upon the above judgment, learned Additional Public Prosecutor contented that the omission to mention in the Tamil Version of the detention order will not vitiate the detention order. It is further contented by the Learned Additional Public Prosecutor that a special Leave petition filed against the said judgment to the Supreme Court was dismissed. It is seen that the SLP filed against the said judgment was not admitted.

6. It is contented by the learned Senior Counsel appearing for the petitioner that the above SLP was dismissed even at the admission stage and as such, it cannot be said that the order of the Supreme Court would be binding on this court. For this contention, he relied upon a decision in Supreme court Employees Welfare association v. Union of India, , wherein it is held that even though no reason is given and a special leave petition is dismissed simpliciter, itcannot be said that there has been a declaration of law by the Supreme Court under Article 141 of the Constitution of India. In Uday Pratap Singh v. State of Bihar, 1994 (28) A.T.C 453 it is held that when a special leave petition is summarily rejected, it occasions no merger of the order of the lower court in the order of the Supreme Court. In view of the above decisions, we hold that the fact that the SLP filed by the detenu against the judgment of the Division Bench in HCP No. 679 of 1998 was dismissed and not admitted by the Supreme Court will not show that the earlier judgment of the Division Bench on similar and identical point were reversed by the Supreme Court. Therefore, the contention of the learned Additional Public Prosecutor that the judgment of the Division Bench rendered in HCP No.679 of 1998 has to be followed has got to be rejected.

7. Learned Additional Public Prosecutor relied upon a judgment of the Division Bench of this court in HCP No.1083 of 1996 dated 28.7.1997. The question that arose for consideration in the above case was, whether the failure on the part of the detaining authority to appraise the detenu about the right of his making an independent representation to the Advisory board apart from making his right of

representation to the state Government would vitiate the order of detention. In the earlier case, the Division Bench while considering above aspect has held that failure to inform the detenu that he has got right to make representation to the Advisory Board would vitiate the detention order. Later, the Division Bench on the basis of the decision of the Supreme Court in Kamleshkumar Ishwardas Patel v. Union of India, 1995 SC 643 has come to the conclusion that the view taken by the same Division Bench in HCP 63 of 1997 was not correct. The above decision will not apply to the facts of the present case.

8. It is not stated in Section 10 of Act 14 of 1982 that in the detention order, the detenu must be informed that he has got right to make representation to the Advisory Board apart from making representation to the Government. The right of the detenu to make representation to the Advisory Board is contained in Section 11 of the Act 14 of 1982. It is Specifically contented in this case that in the detention order the authority has failed to incorporate in Tamil that the representation made by the detenu will be placed before the Advisory Board. Therefore, the decisions relied upon by the learned Additional Public Prosecutor are not germane to the facts of the present case.

9. In Veeramani v. State of Tamil Nadu, 1994 SCC Crl 482, the Apex court has held that the question of the detenu being informed specifically in the ground that he had right to make representation before the detaining authority besides the State Government does not arise. The above case also will not apply to the facts of the present case. Learned additional Public Prosecutor also relied on the decision in Selvaraj v. State of Tamil Nadu, wherein it is held thus:

' It is not mandatory for the detaining authority to mention in the grounds of detention that the detenu has a right to make a representation to the Advisory Board and non-mentioning the said fact in the grounds of detention will not vitiate the order of detention.'

As already stated, there is nothing in the Act which would behove the Government to inform the detenu that he has got independent right to makerepresentation to the Advisory Board and therefore, the above decision will not apply to this case. In A.Alangarasamy v. State of Tamil Nadu, 1987 SCC 477, the Apex Court has held

that the difference between the English Version and the Tamil Version is not consequential in a particular case. It is held by the Apex court that the order of detention and the grounds clearly spell-out why the detenu was being detained. On comparing the English Version with the Tamil Version, the Division Bench of this court has held that the difference between the two versions is not consequential. The facts of the above case, will not apply to the facts of the present case.

10. It is contented by the learned Additional Public Prosecutor that the authority, i.e. the Government is not under obligation to inform the detenu that he has got right to make representation before the Advisory Board. The decision in Veeramani v. State of Tamil Nadu, 1994 SCC 482 relied upon by the learned Additional Public Prosecutor does not say the detenu has no right to make representation to the Government. All that it is stated in the above case is that there is no need to mention in the grounds of detention that the detenu has got right to make representation to the detaining authority besides the state Government. In the case on hand, the question that arises for consideration is whether the failure on the part of the authorities to furnish correct translation of the English Version in Tamil would vitiate the order of detention.

11. At this stage, it would be useful to refer to Section 10 of Act 14 of 1982. Section 10 relate to representation to Advisory Board.

'Reference to advisory Board: In every case where a detention order has been made under the Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3.'

The above section mandates the State Government to place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the person affected by the order. It is manifestly clear from the above section that the State Government after passing the order of detention has

to perform with obligations. It is not sufficient to place before the Advisory Board the grounds of detention but, in addition to that representation already sent by the detenu should be placed before the Advisory Board. That is why, it has been properly mentioned in the English Version of the order that the representation made by the detenu will also be placed before the Advisory Board. But the above sentence is omitted on the Tamil Version of the order.

12. When once we hold that the state is under obligation to inform the detenu that his representation will be placed before the Advisory Board the further question that would arise is, whether the non-furnishing of the correct Tamil Version of the detention order would be fatal.

13. The right of the detenu to make representation to the authorities is guaranteed under Article 22 of the Constitution of India. The representation sent by the detenu to the State Government will have to be placed before theAdvisory Board apart from the grounds relied on by the Government for detaining the detenu. Therefore, when the detenu was not informed that his representation will be placed before the Advisory Board, it would certainly amount to denial of his right. The contention of the respondent is that the fact that the representation made by the detenu to the Government will be placed before the Advisory Board is not mentioned in the Tamil version will not affect the order. We are unable to accept the above contention of the respondent. When it is clearly stated in the English Version that the representation made by the detenu will be considered by the Government and that it will be placed before the Advisory Board, the detenu must be informed about the said fact in the language known to him. As the detenu was not informed that his representation will be placed before the Advisory Board in the language known to him, it cannot be said that the order of detention is not vitiated.

14. As already stated, the Government is under obligation to inform the detenu that the representation made by the detenu will be placed before the Advisory Board in the language known to the detenu. In the latest decision of the Apex Court in Powanammal v. State of Tamil Nadu, : 1999 CriLJ831 the Apex court has held as follows;

'The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.'

It is seen from the above judgment that even the failure to give translated version of the remand order which are written in two lines is fatal to the order of detention. Though, the above decision is not directly applicable to the facts of this case, the law laid down by the Apex court regarding the right of the detenu to make representation has to be taken into consideration. It is held that the non-supply of the document would amount to denial of the right. When such a right is denied to the detenu, there can be no difficulty in holding that the mandatory requirement of section 10 or the Act has been violated. We hold that the omission to state in the Tamil version of the grounds of detention that the representation will be placed before the Advisory Board is fatal.

15. For the reasons stated above, we held that the failure on the part of the Government to furnish correct and true translated version of the English order in Tamil to the detenu would vitiate the order of detention and therefore, we hold that the. detenu is illegal.

16. In the result, this habeas corpus petition is allowed and the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his detention is required in connection with any other case.

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