

Babu Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/849132

Court : Kerala

Decided On : Dec-04-2009

Reported in : 2010(1)KLT230

Judge : R. Basant and; M.C. Hari Rani, JJ.

Acts : Kerala Anti-social Activities (Prevention) Act, 2007 - Sections 3, 3(2), 3(3), 7(2) and 10(4); ;[Constitution of India](#) - Articles 22(5), 32 and 226

Appeal No. : W.P.(Crl.) No. 415 of 2009

Appellant : Babu

Respondent : State of Kerala

Advocate for Def. : K.K. Ravindranath, Additional Director General of Prosecution and; P. Ravindra Babu, Government Plead

Advocate for Pet/Ap. : S. Sreekumar and; P.M. Ziraj, Advs.

Disposition : Petition allowed

Judgement :

R. Basant, J.

1. Does a detenu under a law providing for preventive detention have a fundamental right to be communicated with the order passed on the representation

made by him in exercise of his fundamental right under Article 22(5) of the [Constitution of India](#) ?

ii) Does the communication by anyone other than the authority passing the order of the fate of the representation made by the detenu (and not the order as such) infringe such fundamental right of the detenu?

iii) Has Ext.P3 representation to the Government received the irreducible minimum of 'a real and proper consideration' which it is entitled to under law when it was rejected by Ext.R1(d) order dated 5.9.2009 which was communicated to the detenu under Ext.R1(b) letter?

iv) Is the practice of cryptic one line (nay, one word at times) orders being passed on such representations by the authorities on the basis of notes put up by the subordinates, in tune with the high constitutional values and concern for right to life, personal liberty and freedom of the individual recognised by our system?

These questions arise for consideration before us in this Writ Petition.

2. To the crucially relevant and vital facts first. The petitioner's friend, a young lady in her late thirties by name Ms. Sobha John, was ordered to be detained under Ext.PI order of detention dt.6.8.2009 passed by the 2nd respondent under Section 3(2) of the Kerala Anti-social Activities (Prevention) Act, 2007 (hereinafter referred to as the 'KAAPA'). The said Sobha John, (the detenu hereafter), was in custody in an earlier crime. She remained in custody from 05.06.09. Ext.PI order of detention was passed when she was so in custody already. Judicial custody was transformed into preventive detention custody on 17.8.2009 in execution of the order of detention. Approval of the Government under Section 3(3) of the KAAPA was granted on 24.8.2009. The confirmation of the order under Section 10(4) was issued on 21.10.09. She therefore continues in custody from 17.8.2009 under Ext.PI order.

3. She was reckoned as a known rowdy by the detaining authority in view of 4 cases registered against her. In 3 of them, final reports have already been filed. In the fourth, final report has not been filed and the same is pending investigation.

4. The alleged detainee submitted representations - Exts.P2 and P3 in exercise of her constitutional right under Article 22(5) which right is statutorily recognised in Section 7(2) of the KAAPA. The representation to the Government, copy of which is produced as Ext.P3, is not seen dated. But Ext.R1(b) order shows that the same was dated 24.8.2009. It is not disputed that the power of the Government to consider such representation under the Rules of Business of the Government has been delegated to the Additional Chief Secretary (Home & Vigilance). The said Additional Chief Secretary passed the order on such representation on 5.9.2009 which is available in Ext.R1 (d). The order reads:

Request does not deserve consideration.

Rejected.

Sd/- The Additional Chief Secretary 5.9.2009. That order was communicated to the detainee by Ext.R1(b) letter dated 8.9.2009 by Shri B. Babu, Deputy Secretary, evidently a subordinate of the Addl. Chief Secretary. It will be apposite to extract the contents of the said letter sans unnecessary details.

I am to inform you that your representation cited has been examined by the Additional Chief Secretary (Home & Vigilance) on behalf of Government but it is regretted to inform that the same has been rejected since it contains no valid points for consideration.

(emphasis supplied)

5. We are not adverting to the other facts which may not have a direct relevance for our consideration of the 4 questions raised above.

6. Various grounds have been urged by the learned Counsel for the petitioner. We have heard the learned Counsel for the petitioner Sri. S. Sreekumar and the learned Additional Director General of Prosecution Sri. K.K. Ravindranath in detail. In the nature of the contentions raised, we are satisfied that we need concern ourselves in this Writ Petition with the challenge raised on the following ground only.

Ext.P3 representation has not received the consideration which it is entitled to under law and the decision thereon has not been properly communicated to the detenu.

7. It is unnecessary to advert to precedents. Article 22(5) of the Constitution is extracted below:

Article 22(5): When any person is detained in pursuance of an order made under any law providing for 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 a representation against the order.

(emphasis supplied)

8. Whether this constitutional right to make a representation is recognised and reiterated in the particular piece of legislation relating to preventive detention or not, the fundamental right under Article 22(5) of the Constitution continues. However, it must be seen that this right has been recognised in Section 7(2) of the KAAPA also, which we extract below:

Section 7(2): The grounds of detention, specifying the instances of offences, with copies of relevant documents, as far as practicable, on the basis of which he is considered as a 'known goonda' or 'known rowdy' and giving such materials relating to his activities on the basis of which his detention has been found necessary, shall be furnished to him as soon as possible, nevertheless, in any case, within five days of detention and he shall also be informed in writing. under acknowledgment, of his right to represent to the Government and before the Advisory Board against the arrest and detention.

(emphasis supplied)

9. It is perhaps interesting that the Constitution and the KAAPA do not specify how the representation is to be considered. Right to make a representation and the need to afford the detenu an earliest opportunity to make such a representation are unambiguously recognised in the Constitution and the statute. It is also

relevant to note that it is not even mentioned in these provisions that the representation has to be considered. But it is well trite now that the right to an earliest opportunity to make a representation takes within its wings the right to have the said representation considered properly and expeditiously by the authority competent to deal with the representation. Precedents galore on this point. We shall not hence advert to specific precedents.

10. The right to make an early representation and the right to have the same considered early, bring with it yet another facet of the right - the right to be communicated with the fate of the representation. The right to make a representation and the right to have the same considered properly and expeditiously would lose its meaning and content and would be rendered meaningless unless there is a concomitant and corresponding right to be communicated with the result of the consideration, that is the fate of the representation. Precedents have been cited before us to show that the detainee has a right to early communication of such order. The obligation to consider the representation would lose all its sheen and lustre if there were no obligation to communicate the order to the detainee in chains. We do, in these circumstances, have no hesitation to agree that the representation made must not only be considered properly and expeditiously, the fate or the result of such consideration must necessarily be conveyed to the detainee also. There can be no doubt on that proposition of law. We hold that the fundamental right under Article 22(5) includes the fundamental right to be communicated with the order passed on such representation.

11. The right to be communicated with the order is certainly not an empty formality. The detainee does not have any other right to challenge the order except to approach the Constitutional courts with prayer to invoke their paramount constitutional jurisdiction under Article 226 and 32. He is not given any right to challenge the order in appeal. The detainee therefore has a right to know the fate of his representation. Depending on the manner in which that application has been considered, he has to decide on the further course which he should follow to challenge the order. Right to know the fate of the representation is inherent as a human right. Such knowledge of the outcome of his representation is also

necessary to enable him to decide on the further course which he should follow to challenge the order. It is part of the civilisational obligation of our refined legal system wedded to rule of law that such a person who is in helpless preventive custody must be informed of the fate of his representation. Viewed from any angle therefore this right to be communicated with the order has legal overtones both from the point of view of the detainee as also the system. Our system of law accepts and recognises the existence of such a right.

12. The learned ADGP, we must candidly mention, did not fairly dispute the right of the detainee to be communicated with information about the fate of his representation. The learned ADGP contends that it is not the law that the order passed by the authority must itself be communicated. Right to communication is of the information about the fate of the petition and not the communication of the order in particular. We are in agreement with the learned ADGP. The right is to know the fate of the representation. If the fate of the representation is communicated effectively, we are of the opinion that the detainee cannot insist on the technicality that the copy of the order as such must be furnished to him. We would only observe that the fate of the representation must be effectively communicated to him. This communication can be by communicating the order passed by the authority as such by the authority itself or by any other person communicating the content of the order to the detainee. In this case Ext.R1(b) letter is not signed by the Additional Chief Secretary (Home and Vigilance), who is the delegate under the Rules of Business of the Government to exercise the function of the Government under Article 22(5) of the Constitution and Section 7(2) of the KAAPA. We are unable to accept the argument that communication of the order by anyone other than the delegate would vitiate the communication. It is enough, we repeat, if the order is effectively communicated to the detainee. The learned Counsel for the petitioner placing reliance on the decision of a Division Bench of this Court in *Lekha Nandakumar v. Government of India* : 2004 (2) KLT 1094 contends that the order must itself be communicated to the detainee by the authority. In support of this contention reliance is placed on the following passage in para. 5 of the said decision. As the context of the observation is vital we extract the entire portion, but what is crucial is only the portion emphasised.

Para.5: Ext.P5 representation was made to the Central Government and it was addressed to the Secretary to Government of India as directed in the detention order. It is a very detailed representation. That was also rejected and it was informed by Ext.P6, dated 28.5.2004, dispatched on 31.05.2004, as follows:

With reference to the representation dated 4.5.2004 made by Shri B. Nandakumar, a COFEPOSA detenu, he is hereby informed that the aforesaid representation has been carefully considered by the Joint Secretary, Central Economic Intelligence Bureau, Deptt. of Revenue, Ministry of Finance, New Delhi being the Detaining Authority but it is regretted that the same has been rejected.

Sd/- (N. RAJAGOPALAN) Under Secretary to the Government of India This shows that the representation addressed to the Secretary was considered only by the Joint Secretary, that the representation was disposed of after more than three weeks and was not disposed of applying mind by the competent authority. Delay of 16 days was held to be unexplained by the Apex Court in Pabitra N. Rana v. Union of India : AIR 1980 SC 798, and in Khaidem Ibocha Singh v. State of Manipur : AIR 1972 SC 38. It is pointed out by the learned Central Government Standing Counsel that another communication was also sent to him on 31.5.2003 by the Under Secretary informing that Secretary has disposed of the representation. The learned Senior Standing Counsel has also handed over the file. It shows that on receipt of the representation the Under Secretary has prepared a note. Behind the note, the Secretary has made an endorsement as follows:

I have gone through the representation and all relevant papers. The representation does not merit acceptance.

Even though various contentions including non-supply of necessary documents etc. were mentioned in the representation, there is no application of mind by the Secretary to Government. The Secretary has just rejected the representation. It does not show that he has applied his mind. When the Authority disposes a representation, which is a constitutional right of the detenu, it cannot be disposed of like this in a casual manner. Further, the Secretary has not communicated his order to the detenu, but only the Under Secretary has communicated the order. It

is true that even though making of representation is a constitutional right, there is no obligation for the Central Government to grant a hearing. It is also not necessary that an elaborate speaking order should be passed. But from the order it should appear that the authority has applied its mind while disposing of the representation. The order should be sent to the detenu. Here the order passed by the Secretary was not sent to the detenu, but only the factum of rejection of his representation was intimated by the Under Secretary keeping the detenu in dark regarding the way in which his representation was disposed of. There is nothing on record to show that the concerned authority has applied its mind. Even if the Under Secretary informed him that Secretary has disposed of his representation, this is not the way a constitutional obligation is to be discharged by the Government Secretary. Therefore, there is no proper disposal of the representation. We are of the view that on this ground alone the detention order will not stand as there is procedural violation.

(emphasis supplied)

13. Of course a reading of the portions emphasised above in the passage might suggest that communication by another of the order passed by the authority may not be sufficient. The portions emphasized above might create confusion as to whether that is the law. But we find it difficult to accept such understanding of the law based on the above observations. The order passed by the authority may be extracted in extenso or completely by a subordinate officer and that may be communicated to the detenu. In such a case it cannot possibly be contended that there is no communication for the reason that the order was not communicated by the authority which passed the order or that the order as such has not been communicated. The observations extracted above understood properly in the context, according to us, can only mean and insist that the order must be communicated effectively and not that the order as such must be communicated or that the authority which passed the order must himself communicate the order.

14. Having understood the law thus, the next question is whether there has been effective communication. It may in this context be relevant to make note of the relevant entries in the file concerned which has subsequently been placed before

us as Ext.R1(d). In page Nos. 9,10 and 11 of Ext.R1(d), as paragraph numbers 8 to 12, we have the details of the sequence of events which commenced with Ext.P3 and ended with Ext.R1(d). The file notings are extracted below.

8. The detention of Smt. Sobha John has been approved by Govt. and referred to the AB. Their opinion is due only by 19.10.2009. Meanwhile the detenu has put in a representation against the detention.

9. She submits that

(i) entire papers relating to the order was not served on her;

(ii) Her guilt has not been proved in any of the cases;

(iii) Cr. No. 166 of 2007 is a politically motivated false case;

(iv) Cr. No. 12/08 is a false case due to the influence of one Lakhana;

(v) In Cr. No. 323/09, she is only a material witness;

(vi) There is not enough material to classify her as a known rowdy;

(vii) Case diary do not form part of the records before the authorised officer;

(viii) She is a house wife with a child and her aged mother is solely dependent on her.

10. The representation with the information at para. 9 and the details of the detention are put up for kind consideration and orders.

(paragraphs 8, 9 and 10 are in the hand of some subordinate)

11. Notes above may be seen. There are 3 cases against the detenu under trial and one case under investigation. Hence the court will decide whether she is guilty or not. It may be noted that 3 cases against her under trial is a sufficient cause to detain her as per the KAAPA Act. The other points raised by her are also baseless. Hence the request may be rejected.

Sd/- Babu. B Deputy Secretary to Government, Home Department, Government Secretariat, Thiruvananthapuram¹². Request does not deserve consideration. Rejected.

Sd/- 5.9.2009 K. Jayakumar, Additional Chief Secretary, Home & Vigilance¹³. Orders above. DFA.

15. We have already extracted contents of Ext.R1(b) letter, under which a Deputy Secretary of the Government on behalf of the Additional Chief Secretary has communicated to the detainee the fate of her representation.

16. The learned Counsel for the petitioner argues that Ext.R1(b), by no stretch of imagination, can be held to be a communication of the order dated 05.09.09 of the Additional Chief Secretary (Home and Vigilance). The Additional Chief Secretary (Home and Vigilance) had only passed the order 'Request does not deserve consideration. Rejected'. If Ext.R1(b) is read and reread, it cannot be seen that such an order has been communicated under Ext.R1(b). Nay, what is stranger is that in Ext.R1(b) it is said that the rejection is "since it contains no valid points of consideration". That is not something which we can discover or invent in the order dated 5.9.2009 of the Additional Chief Secretary.

17. Driven to the wall, the learned Additional Director General of Prosecution comes out with a very ingenious explanation. The learned ADGP argues that the order 'Request does not deserve consideration. Rejected.' must realistically be read as 'representation does not deserve acceptance. Rejected'. Going by plain commonsense and the rules of semantics, we are afraid, the order passed on 5.9.2009 cannot yield to such a construction. The learned ADGP submits that the representation has 2 parts - the first is the statement of facts and contentions and finally the request made. It is contended that when the Additional Chief Secretary stated that the request does not deserve consideration, the intention was not to say that the representation does not deserve consideration. Only the request did not deserve consideration. It is argued that the request in the last paragraph of Ext.P3 was 'that the order of detention may be revoked'. That request did not deserve consideration. That is what the Addl. Chief Secretary held, it is urged.

18. There is inherent danger in the invitation to read the order dated 05.09.09 in that manner. If we try to read it in that way, it would mean that the representation was not considered at all. The obligation is to consider the representation and not necessarily the request alone. In that view of the matter even if it were to be held that only the request was held not to deserve consideration, the representation will still remain unconsidered.

19. It is argued that the expression 'does not deserve consideration' should not be read to conclude that the 'request or the representation was not considered or they did not deserve consideration'. Notwithstanding the particular words used, the conclusion is irresistible that what was decided was that the representation/request did not deserve favourable consideration/acceptance, argues the learned ADGP.

20. The learned Counsel for the petitioner argues that what is stated in the order dt.5.9.2009 is not communicated and what is communicated in the letter Ext.R1(b) is not ordered. The counsel hence contends that there is no effective communication.

21. We have considered the question whether the order dated 5.9.2009 can be read to mean that 'the representation does not deserve acceptance and is hence rejected'. In this context the learned Counsel for the petitioner points out that such a favourable conclusion taking liberal and generous view of the lapse on the part of the officer is not justified at all. The learned Counsel relies on the observations in *Hem Lall Bhandari v. State of Sikkim* : AIR 1987 SC 762 which are extracted with approval in the later decision in para. 11 of *Union of India v. Paul Manickam* : 2004 (1) KLT 364 (SC) : (2003) 8 SCC 342.

It is not permissible, in matters relating to the personal liberty and freedom of a citizen, to take either a liberal or a generous view of the lapses on the part of the officers.

22. On the basis of the above discussions, we take the view that going by the plain language of the order dated 5.9.2009 and Ext.R1(b) letter, it cannot be held that there has been an effective communication.

23. That takes us to the next question whether Ext.P3 representation has received the consideration which is due to it in terms of Article 22(5) of the Constitution and Section 7(2) of the KAAPA. It is unnecessary to advert to precedents in detail. We had occasion to consider this question in detail in *Shruthi v. State of Kerala* 2009 (4) KLT 893. We had in that decision adverted to the milestone decisions rendered by the Supreme Court on this aspect. It has been held beyond the trace of a semblance of doubt that such representation by the detenu cannot be disposed of casually or mechanically. The minimum that such a representation deserves is a 'real and proper consideration' as held in *H. Saha v. State of West Bengal* : AIR 1974 SC 2154. In *Bhut Nath Mete v. State of W.B.* : (1974) 1 SCC 645 it has been held that

it must be self evident from the order that the substance of the charge and the essential answers in the representation have been impartially considered.

24. Still later in *John Martin v. State of West Bengal* : (1975) 3 SCC 836, a 3 Judge Bench of the Supreme Court after adverting to *H. Saha* (supra) and *Bhut Nath* (supra) has held as follows in para. 3:

Para.3: This however, does not mean that the appropriate Government can reject the representation of the detenu in a casual or mechanical manner. The appropriate Government must bring to bear on the consideration of the representation an unbiased mind. There should be, as pointed out by this Court in *Haradhan Saha's* case, 'a real and proper consideration' of the representation by the appropriate Government. We cannot over- emphasise the need for the closest and most zealous scrutiny of the representation for the purpose of deciding whether the detention of the petitioner is justified.

(emphasis supplied)

25. We are now called upon to decide whether Ext.P3 has received a real and proper consideration by the Government. It is well settled that 'the bare bones of natural justice need not be clothed with ample flesh of detailed hearing and elaborate reasoning' (see *Bhut Nath Mete* para. 23). *H. Saha* (supra) has also laid down beyond the pale of controversy that there need not be hearing of the detenu

before the representation is considered and decision taken. There need not be a speaking order. The learned ADGP relies on the passage in H. Saha to contend that 'disclosure of reasons' is also not necessary.

26. Quality and nature of consideration that a representation should receive must certainly depend upon the facts and circumstances of the case. But the irreducible minimum is that it must receive a real and proper consideration. The consideration must not be casual or mechanical. It is desirable 'that a brief expression of the principal reasons is made' (see Bhut Nath Mete - para. 23 (supra)). Such consideration must be revealed from the order ordinarily. Of course by production of the relevant files etc. when the order is challenged in judicial review, the requisite satisfaction can be induced in the mind of the court that the representation had received a real and proper consideration. There cannot be any dispute that essentially the real and proper consideration must be revealed from the order. The question again is whether the order in the instant case reveals such consideration.

27. We go back to the order. 'Request does not deserve consideration. Rejected.', is the order. No authority has the power or the option to ignore the mandate of Article 22(5) of the Constitution and Section 7(2) of the KAAPA and hold that the representation does not deserve consideration. Whatever the representation, it deserves real and proper consideration. We must say that the order as it is worded does not at all reveal a real and proper consideration.

28. In this context we have adverted to the nature of the representation made in Ext.P3. We have exhaustively gone through paragraphs 8 to 13 of Ext.R1(d) file notings extracted above. Basically the detenue raised the grievance that one of the 4 cases is still under investigation. According to her, a proper investigation has not been conducted. It is also urged that mind has not been properly applied before entertaining the requisite latter subjective satisfaction under Section 3 of the KAAPA. It is contended before us that one of these cases is by a de facto complainant against whom she has filed a private complaint. The police have unfairly charge sheeted her, it is contended. It is further argued that in the 4th case in which final report has not yet been filed, she has been arrayed as an accused

for the sole reason that she is one of the eye witnesses in an offence of murder committed by the victim/deceased in that case. It is also specifically contended in Ext.P3 that certain documents have not been furnished to the detainee. The detainee has a further grievance that while she was in custody and after her application for bail was dismissed, the order of detention has been passed without specific reference to the circumstance that she continues in custody after rejection of her bail application.

29. We need not consider the acceptability of those contentions in detail. But we are definitely of the opinion that those objections raised undoubtedly deserved consideration.

30. In this context we take note of the 8 points noted against entry 9 in Ext.R1(d) extracted above. We note from those points raised that the question whether the latter subjective satisfaction under Section 3 of the KAAPA has been entertained properly has not been raised for consideration or considered at all by the Additional Chief Secretary. The Additional Chief Secretary did not apply himself to that aspect. It is not seen raised as a point in the notes put up by some subordinate. Whether the latter subjective satisfaction was properly entertained is not a question raised in the notes put up by some subordinate (his name cannot be identified from the records) or in the notes put up by the Dy. Secretary to Government Home Department. In the order dated 5.9.2009 that question is not seen considered at all.

31. The conclusion, in these circumstances, is inevitable that the crucial question was not raised by the ones who put up the notes earlier and was not considered by the Additional Chief Secretary (Home and Vigilance) who passed the order dated 5.9.2009. We therefore come to the conclusion that there has been no real and proper consideration of Ext.P3 representation.

32. The learned ADGP contends that a perusal of the relevant file notings in Ext.R1(d) must convey to the Court that the one who put up the notes as also the Dy. Secretary Sri. Babu who put up the notes before the Addl. Chief Secretary with his comments have specifically referred to the relevant facts and circumstances in the notes which are made with reference to page numbers in Ext.R1(d). The

learned ADGP argues that it is not essential to pass a speaking order. Disclosure of reasons is not necessary. A careful perusal of Ext.R1(d) must inevitably convey that the Additional Chief Secretary (Home & Vigilance) had considered the notes put up by the subordinate, the further notes put up by the Deputy Secretary and also the relevant materials indicated by reference to page numbers in Ext.R1(d). We need only mention that the order passed does not reveal pointed application of mind to the relevant contentions raised in Ext.P3. Moreover as we have already seen neither the clerk/officer who put up the first notes in para. 9 and 10 or the Deputy Secretary who put up the notes in para. 11 or the Additional Chief Secretary who passed the order in para. 12 appear to have considered whether the subjective satisfaction is entertained validly before the order of detention is passed.

33. The conclusion, in these circumstances, appears to be inevitable that Ext.P3 has not received the real and proper consideration which it deserves in the light of the decision of the Constitution Bench in H. Saha (*supra*).

34. Another question worries this Court. Is this practice of the authority called upon to consider the representation passing one word or one line orders like the one in this case correct and proper? In the light of the findings that we have already entered, an authentic pronouncement on that aspect does not really appear to be necessary in this case. But a thought which strikes us, we feel, deserves to be expressed. We are conscious of the pressure of work which an authority like the Additional Chief Secretary may have to face. We are conscious of the fact that the decision is essentially an executive decision. The executive style of decision making is well entrenched in our system. The judicial decision making process involves hearing of both sides before the decision is taken. The executive decision making involves and includes the process of considering the notes made by the subordinates. The practice of assistants/subordinates writing detailed notes and offering reasons either way on a platter for the decision making authority for his ultimate and crucial decision and the authority stating in the file 'approved' or 'accepted' if the reasons weigh with him and 'rejected' or 'disapproved' if they do not, has come to stay in the working style of the executive. But, is such decision making sufficient when it comes to matters of deprivation of the right to life,

freedom and liberty of a citizen, which are the core values in our constitutional scheme? The style may have to change. Such orders will have to be passed which can give the authority itself as also the person who is the victim of the decision and the Courts called upon to exercise their powers of judicial review, the satisfaction that there has been real and proper consideration. One word or one line orders like the ones in this case may have to be held to be not sufficient to discharge that basic commitment of the system to the core values of freedom and liberty of the individual. That according to us is the irreducible minimum, which the authorities ordering preventive detention, approving the same and confirming the same, must offer to the victim of such an order. This is not only the need of the victim, but it is a civilisational mandate. In a system wedded to rule of law and which considers the core values of right to life, freedom and liberty to be sacrosanct the executive may have to alter its style of writing the orders to give better assurance and satisfaction to all concerned. Bound we are by the decision in H. Saha (supra) which declares that the right to be heard, the obligation to pass a speaking order and the duty of disclosure of reasons is not there. But armed we are with the observation therein that a real and proper consideration must be given for the representation under Article 22(5) of the Constitution. We feel that it will not be unnecessary or improper for the Court in judicial review to insist that such style of passing orders when it comes to orders interfering with the right to life, freedom and liberty of the individual is not sufficient and a better, more effective and proper order must be passed. It may be perfectly permissible for the subordinates to put up detailed notes and offer reasons/circumstances in support and against for the executive authority to consider and pass orders. But the authority has to apply his mind. He may or may not accept the reasons in the notes. He must not be a prisoner of the notes. He must in an appropriate case take note that the notes do not cover the real questions raised. To put it simply, his obligation is not merely to consider the notes put up, but the representation. The order must reveal real and proper consideration of the representation. Even when notes are put up and the notes cover the issues raised, the order must reveal 'real and proper consideration'. One line/one word orders like the instant one cannot give the Court sitting in judicial review the satisfaction that the representation had received real and proper consideration. In matters concerning the life, liberty and freedom of

citizens, the executive must equip itself with the competence to pass orders which will reveal real and proper consideration of the issues.

35. We have noted with anguish on several earlier occasions, the inadequacies of Executive Authorities in handling this jurisdiction of Preventive Detention. So inadequate is societal safety and security that the legislature has perceived the need for the system to swallow the bitter pill of Preventive Detention. Legislation has therefore conceded to the Executive the power to order Preventive Detention. But the Executive is proving itself to be unequal to this onerous duty/task of taking advantage of the legislative enactment to offer succor to the polity. Many are the instances where this Court is constrained to concede to undeserving detenus advantages on the basis of procedural inadequacies. It is the burden of the administrative executive to ensure that the legislative intentions are translated to tangible actions to provide security and safety to members of the polity. Courts do recognise that the battle for individual freedom and liberty have been fought mainly with weapons of procedural safeguards. Courts concede benefits to the detenus when procedural compliance is not made, not because the detenus are paragons of virtues or righteousness, but because a refined system wedded to rule of law and having respect to the core values of individual freedom and liberty has to insist on procedural compliance as a mandate of civilisational finesse. This Court does concede such benefits with a heavy heart, concerned that the benefits reach those who are not strictly morally entitled to such benefits.

36. The executive has to change its style of functioning. It has to imbibe the concern of the system for right to life, personal liberty and freedom. It must zealously ensure that the personnel handling this jurisdiction are trained in the law and procedure. It must be zealously insisted that no procedural lapse takes place on the part of the executive personnel obliging the Courts, Government and the Advisory Board to concede any undeserved advantage to any one. Equipping the personnel with the requisite knowledge of law and training the personnel to handle the sensitive jurisdiction appears to be the only answer. The personnel handling such a jurisdiction must have the time and competence to handle such work. The rules of business of the Government must be so arranged that those handling this sublime jurisdiction shall have the time to patiently apply themselves to the

onerous task and challenge before them. We shudder at the thought that a busy official like the Additional Chief Secretary (Home & Vigilance) is entrusted with this additional responsibility. By its very nature, this work involving determination of the right to life, freedom and personal liberty, deserve to be entrusted to a senior official who has the time and opportunity to devote his time fully in addition to competence and sublimity. The political executive has to realise that the burden is on them to translate the legislative mandate to tangible action to benefit the polity. Bold and firm decisions will have to be taken and it will have to be ensured that detenus do not walk away with undeserved benefits on account of procedural lapses.

37. The system must be able to find solutions. Workshops/seminars must be held to impart training and knowledge to all District Magistrates and Superintendents of Police in charge of the districts as also delegates of the Government handling the jurisdiction. They must be given the assistance of trained personnel with legal competence exclusively to handle this jurisdiction. They must be made responsible for their actions and procedural lapses must be frowned upon and prevented effectively. The political executive must take the lead and the legislature's mandate for preventive detention, reluctantly conceded to the Executive in the interest of societal security and safety must be translated into effective and meaningful actions.

38. The order of detention in this case must fail for the twin reasons that there has been no effective communication of the order passed [Ext.R1(d) dt.05.09.09] and also that the order really passed does not reveal that the representation has received 'real and proper consideration' which it is entitled to.

39. The challenge in this Writ Petition hence succeeds.

40. In the result:

a) This Writ Petition is allowed;

b) It is held that the continued detention of the detenu Ms. Sobha John is illegal and unjustified;

c) It is directed that the detenue Ms. Sohba John shall forthwith be released from custody by the prison authorities if her continued detention is not necessary in connection with any other case.

d) The Registry shall forthwith communicate the directions to the prison authorities at Central Prison, Thiruvananthapuram.

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