

State of Maharashtra

Vs

Prabhakar Pandurang Sangzgiri and Another

Criminal Appeal No. 107 of 1965

(V. Ramaswami – I, K. Subba Rao, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

06.09.1965

JUDGEMENT

SUBBA RAO. J –

Prabhakar Pandurang Sangzgiri, who has been detained by the Government of Maharashtra under s. 30 [1] [b] of the Defence of India Rules, 1962, in the Bombay District Prison in order to prevent him from acting in a manner prejudicial to the defence of India, public safety and maintenance of public order, has written, with the permission of the said Government, a book in Marathi under the title "Anucha Antaragaat" [Inside the Atom]. The learned Judges of the High Court, who had gone throughout the table of contents of the book expressed their opinion on the book thus:

"..... we are satisfied that the manuscript book deals with the theory of elementary particles in an objective way. The manuscript does not purport to be a research work but it purports to be a book written with a view to educated the people and disseminate knowledge regarding quantum theory."

The book is, therefore, purely of scientific interest and it cannot possibly cause and prejudice to the defence of India, public safety or maintenance of public order. In September, 1964, the detenu applied to the Government of Maharashtra seeking permission to send the manuscript out of the Jail for publications; but the Government by its letter, dated March 27, 1965, rejected the request. He again applied to the Superintendent, Arthur Road Prison, for permission to send the manuscript out and that too was reject. Thereafter, he filed a petition under Art. 226 of the Constitution in the High Court of Maharashtra at Bombay for directing the State of Maharashtra to permit him to sent out the manuscript of the book written by him for its eventual publication. The Government of Maharashtra in the counter affidavit did not allege that the publication of the said book would be prejudicial to the objects of the Defence of India Act, but averred that the Government was not required by law to permit the detenu to pu

The contentions of the learned Additional solicitor General may be briefly states thus: When a person is detained he loses his freedom; he is no longer a free man and, therefore, he can exercise only such privileges as are conferred on him by the order of detention. The Bombay Condition of detention order 1951, which regulates the terms of the first respondent detention, does not confer on him any privilege or right to write a book and send it out of the person for publication. In support of his contention he relied upon the observations of Das. J. as he then was, in A. K. Gopalan v. State of Madras Wherein the learned judge has expressed the view, in the context of fundamental rights, that if a citizen loses the freedom of his person by reason of a lawful detention, he cannot claim the rights under Arts under Art. 19 of the Constitution as the rights enshrined in the said article are only

the attributes of a free man.

Mr. Garg, learned counsel for the detenu, raised before us the following two points : [1] a restriction of the nature imposed by the Government on the detenu can only be made by an order issued by the appropriate Government under cls. [f] and [h] of sub-r. [1] of r. 30 of the Defence of India Rules, 1962, hereinafter called the Rules, and that too in strict compliance with s. 44 of the Defence of India Act, 1962, hereinafter called the Act, and that as the impugned restriction was neither made by such an order nor did it comply with s. 44 of the Act, it was an illegal restriction on his personal liberty; and [2] neither the detention order nor the conditions of detention which governed the first respondent's detention enabled the Government to prevent the said respondent from sending his manuscript book out of the prison for publication and, therefore, the order of the Government rejecting the said respondent's request in that regard was illegal.

Article 358 of the Constitution suspends the provisions of Art. 19 of the Part III of the Constitution during the period the proclamation of emergency is in operation; and the order passed by the President under Art. 359 suspended the enforcement, inter alia, of Art. 21 during the period of the said emergency. But the President's order was a conditional one. In effect it said that the right to move the High Court or the Supreme Court remained suspended if such a person had been deprived of his personal liberty under the Defence of India Act, 1962, or any rule or order made thereunder. If a person was deprived of his personal liberty not under the Act or a rule or order made thereunder but in contravention thereof, his right to move the said Courts in that regard would not be suspended. The question, therefore, in this case is whether the first respondent's liberty has been restricted in terms of the Defence of India Rules whereunder he was detained. If it was in contravention of the said Rules, he would have

In exercise of the power conferred on the Central Government by s. 3 of the Act, the Central Government made the Defence of India Rules. Under s. 30 of the rules the Central Government or the State Government, if satisfied with respect to any person that in order to prevent him from acting in any manner prejudicial to the matters mentioned therein, it is necessary so to do, may make an order directing that he be detained. Under sub r. 4 thereof he shall be liable to be detained in such place and under such conditions as to maintenance, discipline and the punishment of the offence and the breaches of discipline as the Central Government or the State government as the case may be may from time to time determine. In exercise of the power conferred under sub-r. [4] of r. 30 of the Rules, the Government of Maharashtra determined that the conditions as to maintenance, discipline and the punishment of offences and breaches of discipline governing persons ordered to be detained in any place in the State of Mahara

We have gone through the provisions of the Bombay Conditions of Detention Order, 1951. There is no provision in that order dealing with the writing or publication of books by a detenu. There is, therefore, no restriction on the detenu in respect of that activity. Sub rule [iii] of r. 17 of the said order reads:

"All letters to and from security prisoners shall be censored by the Commissioner or the Superintendent, as the case may be. If in the opinion of the Commissioner or the Superintendent, the despatch or delivery of any letter is likely to be detrimental to the public interest or safety or the discipline of the place of detention, he shall either withhold such letter, or despatch or deliver it after deleting any objectionable portion therefrom. In respect of the censoring of letters of security prisoners, the Commissioner or the Superintendent shall comply with any general or special

instructions issued by Government."

The Maharashtra Government has not relied upon this rule. In deed, in the counter affidavit its case was not that it prohibited the sending of the book for publication under the said sub-rule, but that it was not required bylaw to permit the detenu to publish books while in detention; nor was it its case before the High Court that the publication of this book was detrimental to public interest or safety or the discipline of the place of detention. Prima facie the said sub rule applies only to letters to and from security prisoners and does not regulate the sending out of prison books for publication. Indeed, the learned Additional Solicitor General does not rely upon this provision.

Let us now consider the validity of the argument of the learned Additional Solicitor General. He relies upon the following observations of Das, J. as he then was, in A. K. Gopalan's case, at p. 291.

"If a man's person is free, it is then and then only that he can exercise a variety of other auxiliary rights, that is to say, he can, within certain limits, speak what he likes, assemble where he likes, form any associations or unions, move about freely as his own inclination may direct, reside and settle any where he likes and practice any profession or carry on any occupation, trade or business. These are attributes of the freedom of the person and are consequently attached to the person."

Relying upon these observation it is argued that freedom to publish is only a component part of that of speech and expression and that in the light of the said observation, as the detenu ceased to be free in view of his detention, he cannot exercise his freedom to publish his book. In other words, as he is no longer a free man, his right to publish his book, which is only an attribute of personal liberty, is lost. The principle accepted by Das J. as he than was, does not appear to be the basis of the conclusion arrived at by the other learned Judges who agreed with his conclusion. Different reasons are given by the learned Judges for arriving at the same conclusion. As has been pointed out by this court in the second Kochunni's case, the views of the learned Judges may be broadly summarized under the following heads: [1] to invoke Art 19 [1] of the constitution, a law shall be made directly infringing that right: [2] Arts. 21 and 22 constitute a self contained code; and [3] the freedoms in Art. 19 postulate

In this case as we have said earlier, we are only concerned with the question whether the restriction imposed on the personal liberty of the first respondent is in terms of the relevant provisions of the Defence of India Rules. Here, the first respondent's liberty is restricted under the Defence of India Rules subject to conditions determined in the manner prescribed in Sub-e. [4] of r. 30 thereof, we find it difficult to accept the argument that the Bombay conditions of Detention order, 1951, which lays down the conditions regulating the restrictions on the liberty of a detenu, conferred only certain privileges on the detenu. If this argument were to be accepted, it would mean that the detenu could be starved to death, if there was no condition providing for giving food to the detenu. In the matter of liberty of a subject such a construction shall not be given to the said rules and regulations, unless for compelling reasons. We, therefore, hold that the said conditions subject to which his liberty can be re

The Appellant, therefore, acted contrary to law in refusing to send the manuscript book of the detenu out of the jail to his wife for eventual publication.

In the view we have taken, another argument advanced by Mr. Garg, namely, that the restriction can only be imposed by an order made under s. 30 [f] or [h] of the Rules and that too in strict

compliance with s. 44 of the Act need not be considered. That question may arise if and when an appropriate condition is imposed restricting the liberty of a detenu in the matter of sending his books for publication. We do not express our view on this question one way or other.

In the result, the order passed by the High Court is correct. The appeal fails and is dismissed.

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