

A. K. Gopalan

Vs

The Government Of India

Writ Petitions Nos. 51 and 53 of 1965

( CJI P. B. Gajendragadkar, M. Hidayatullah, R. S. Bachawat, V. Ramaswami - I, K. N. Wanchoo J)

27.10.1965

JUDGMENT

WANCHOO, J. –

These two petitions under Art. 32 of the Constitution for a writ of habeas corpus raise common questions and will be dealt with together. The main points raised in these petitions have been dealt with in *k. Ananda Nambiar v. Chief Secretary, Government of Madras and other* ([1966] 2 S.C.R. 178.) in which judgment is being delivered today. It remains now to consider the other points that arise specially in these petitions.

The petitioners are members of the Left Communist Party and were ordered to be detained along with others numbering 140 in all under r. 30(1)(b) of the Defence of India Rules (hereinafter referred to as the Rules) by orders of the Governor of Kerala passed on December 29, 1964. In pursuance of these orders the petitioners were arrested on December 30, 1964. At that time the State of Kerala was being governed by virtue of the Proclamation of the President dated September 10, 1964. By this Proclamation the President assumed to himself all functions of the Government of the State of Kerala and all powers vested in or exercisable by the Governor of that State and declared that the powers of the legislature of the said State would be exercisable by or under the authority of Parliament. The Proclamation also provided that in the exercise of the functions and powers assumed by the President with respect to the governance of the State, the President would act to such extent as he thought fit through the Governor of the said State. Certain other incidental provisions were also made in the Proclamation with which however we are not concerned. The case of the petitioners is that these orders of detention were mala fide inasmuch as a general election was going to be held in Kerala in the beginning of March 1965. In order to damage the prospects of the Left Communist Party in the election and to improve that of the congress Party these orders of detention were made under the Rules.

After the elections were over, the Left Communist Party emerged as the largest single party. There was an apprehension that if the Proclamation was withdrawn and a party government came into power in the State, the petitioners and others like them might be released. Consequently it is said that on March 4, 1965, the order of the Governor dated December 29, 1964 was cancelled and another order was made on the same date (namely, March 4, 1965) by the Central Government in the name of the President ordering the detention of the petitioners under the Rules. The petitioners contend that this order was also mala fide, as it was made to circumvent the possibility of the petitioners' release in case a party-government came into power in the State of Kerala after the elections. The petitioners further contend that there was no application of the mind of the authority when the orders of detention were passed on December 29, 1964 and March 4, 1965. Further it is

contended that there was no material before the Central Government on March 4, 1965 on the basis of which the orders of detention could be passed and therefore the orders passed on that date were illegal. Lastly, it is urged that if the orders of detention passed on December 29, 1964 were good, the only way in which they could be cancelled was by release of the petitioners and they could not be replaced by other orders of detention. It is further urged that the order of cancellation was passed on March 4, 1965 and so was the new order of detention; but both these orders were served on them on March 6, 1965. It is said that the Governor's order dated December 29, 1964 having been cancelled on March 4, 1965 came to an end that day while the President's order having been served on the petitioners' on March 6, 1965 began from that day and therefore there was no warrant for detention between March 4, and March 6, 1965.

Replies have been filed on behalf of the Government of India traversing all the allegations so far as detention under the order dated March 4, 1965 is concerned. No reply has been filed on behalf of the Governor of Kerala with respect to the detention order of December 29, 1964 for the reason that the State of Kerala was not made a party to these petitions. The said orders have not been specifically challenged as they were not in force when the petitions were made.

It is well-settled that in dealing with a petition for habeas corpus the court has to see whether the detention on the date on which the application is made to the court is legal, if nothing more has intervened between the date of the application and the date of hearing. In the present case the application were made to this Court after the orders dated March 4, 1965 had been passed. It is therefore unnecessary to consider the validity of the detention orders made on December 29, 1964, for those orders are no longer in force and the petitioners are detained by orders passed on March 4, 1965. We shall therefore consider only the grounds urged against the validity of the orders passed on March 4, 1965.

The first point that is urged is that these orders are mala fide inasmuch as they were passed to circumvent the possibility of the petitioners' being released in case a party government came into power in the State of Kerala after the elections in the beginning of March 1965. These allegations have been denied in the affidavit filed on behalf of the Government of India. But apart from this denial we fail to see how the orders passed on March 4, 1965 can be said to be mala fide if the Central Government was satisfied that with a view to preventing the petitioners from acting in a manner prejudicial to the defence of India, civil defence, public safety and public order it was necessary to detain them. It has been clearly stated on behalf of the Government of India that on the materials placed before it it was so satisfied before it passed the orders dated March 4, 1965. In the face of this affidavit on behalf of the Government of India it cannot possibly be said that the orders passed on March 4, 1965 were mala fide, even if we were to assume that there was any such possibility of release as has been alleged by the petitioners, though that has also been denied on behalf of the Government of India. We therefore reject the contention that the orders passed on March 4, 1965 were mala fide.

Then it is urged that there was no application of mind by the Government of India before the orders in question were passed for as many as 140 orders were passed on the same day and that shown that mind could not have been applied to each individual case before so many orders were passed all at once on one day. We are of opinion that there is no force in this contention either. The reply on behalf of Government of India in this connection is that the question as to the detention of the persons who were ordered to be detained on March 4, 1965 was under consideration of the Government of India for quite some time and that only detention orders were passed on one day. It has also been stated on behalf of the Government of India that it was satisfied with respect to each

individual person ordered to be detained on March 4, 1965 that detention was necessary for reasons already set out and it was after such satisfaction that the orders were passed though they happened to be passed on the same day. We are not therefore prepared to accept from the simple fact that as many as 140 orders were passed on the same day there was no satisfaction of the Government of India with respect to each individual case. We have no reason to hold that the affidavit filed on behalf of the Government of India in this respect should not be believed. This contention must also fail.

Then it is urged that there was no material before the Central Government before it passed the orders on March 4, 1965. This allegation has also been denied on behalf of the Government of India. The allegation is that the file relating to these detenus must have been with the Government of Kerala in Trivandrum till March 4, 1965 and therefore the Government of India passed the orders on March 4, 1965 without any material before it. The reply of the Government of India is that the file pertaining to the activities of the petitioners and others like them and the materials relating of the thereto were before the Government of India when the orders of March 4, 1965 were passed. We fail to see why there could not be two files relating to the activities of the petitioners one with the Government of Kerala and another with the Government of India. At any rate it has been emphatically asserted on behalf of the Government of India the papers concerning the activities of the petitioners and others like them were with the Government of India and it was after the Government has satisfied itself from those papers as to the likely prejudicial activities of the petitioners that the it passed the orders in question. There is therefore no force in this contention either and it is hereby rejected.

We now come to the cancellation of the detention orders dated December 29, 1964 on March 4, 1965 and the service of the orders of cancellation as well as the fresh orders of detention passed on March 4, 1965. We have already indicated that when the orders of December 29, 1964 were passed the President had assumed all functions of Government of the State of Kerala and the Governor was the agent of the President in the matter of governance of the State to such extent as the President thought fit to act through him. Therefore the order of the Governor dated December 29, 1964 was in the circumstances the order of the President acting through the agency of the Governor of Kerala in respect of the governance of the State and it was open to the President to cancel the order passed by his agent and that is what he did on March 4, 1965. In the circumstances the cancellation cannot be assailed as illegal. But it is urged that if the orders of detention passed on December 29, 1964 were good orders, they could not be cancelled except by release of detenus. We cannot accept this contention. These orders were passed when the Government of the State of Kerala was being carried on under the Proclamation of September 10, 1964. That did not prevent the Central Government from deciding whether it should itself detain these persons who had till then been detained under the orders of December 29, 1964. If it decided to do so we cannot see anything illegal in this action. Further as the Government of Kerala was functioning under the President by virtue of the Proclamation, the decision of the Central Government to detain these persons for itself could be given effect to by asking the President to cancel the orders of the Governor dated December 29, 1964. Thereafter the Central Government could pass the order of March 4, 1965 detaining the petitioners and others like them. Even where persons are detained by orders of the State Government we can see no illegality in the Central Government asking the State Government concerned to withdraw its order of detention and to detain the persons thereafter by orders of the Central Government, provided the State Government is agreeable to withdraw its order of detention. Therefore there was nothing illegal in the President functioning under the Proclamation of September 10, 1964 withdrawing the orders of detention of December 29, 1964 and thereafter the Central Government passing the orders of detention of its own on the same day. It was not necessary

to carry out the empty formality of release from jail under the orders of cancellation and then to arrest the persons released immediately they came out of jail and to serve on them the new order of detention dated March 4, 1965 : (see Smt. Godavari Shamrao Parulekar v. The State of Maharashtra) ([1964] 6 S.C.R. 446.).

We do not think it necessary to decide the nature of the detention between March 4 and March 6, 1964. Nor is it necessary in the present cases to decide whether an order of cancellation comes into effect immediately while an order of detention takes effect from the date it is communicated. What we have to see is whether the detention under the fresh order passed on March 4, 1965 was legal when the petition for habeas corpus was made. As to that we have no doubt that it is legal.

We therefore dismiss the petitions.

Before we leave these we would like to refer to the inordinate delay that took place between the making of the petitions to the jail authorities and their reaching this Court. The petitions were made on March 15, 1965 but they reached this Court on April 12, 1965, exactly four weeks later. We consider that ordinarily one week is enough for any such petition to reach this Court from any part of India We also consider that it is the duty of the jail authorities to send such petitions directly and at once to this Court and indeed to the High Court where they are addressed to them. We trust that there will be no such lapse again in future.

Petitions dismissed.

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