SUPREME COURT OF INDIA

Hadibandhu Das

Vs.

District Magistrate, Cuttack

C.A.No.1210 of 1968

(J. C. Shah, V. Ramaswami, V. Bhargava, C. A. Vaidialingam and A. N. Grover, JJ.)

02.05.1968

JUDGEMENT

SHAH, J.:-

1. By order pronounced on April 22, 1968, we directed that the order passed by the State of Orissa detaining the appellant under the Preventive Detention Act be quashed. We proceed to record our reasons in support of our order.

2. On December 15, 1967, the District Magistrate, Cuttack, served an order made in exercise of power under Section 3 (1) (a) (ii) of the Preventive Detention Act (4 of 1950) directing that the appellant be detained on the grounds that he-the appellant-was acting in a manner prejudicial to the maintenance of public order by committing breaches of public peace, indulging in illicit business in Opium, Ganja, Bhang, country liquor, riotous conduct, criminal intimation and assault either by himself or through his relations, agents and associates as set out in the order. On December 19, 1967 the appellant filed a petition in the High Court of Orissa challenging the validity of the order of detention on the grounds, inter alia that the order and the grounds in support thereof served upon the

appellant were written in the English language which the appellant did not understand. On January 18, 1968, the District Magistrate, Cuttack supplied to the appellant an Oriya translation of the order and the grounds. On January 28, 1968 the State of Orissa revoked the order and issued fresh order that:

"Whereas the order of detention dated the, 15th December, 1967, made by the District Magistrate, Cuttack against Shri Hadibhandhu Das son of late Ramchandra Das of Manglabag, town Cuttack has been revoked by the State Government on account of defects of formal nature by their order No. 396C dated the 28th January, 1968.

And whereas the State Government are satisfied with respect to the said Hadibhandhu Das, that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain him.

Now therefore, in exercise of the powers conferred by Section 3 (1) (a) (ii) read with Section 4 (a) of the Preventive Detention Act, 1950, the State Government do hereby direct that the said Hadibandhu Das be detained in the District Jail at Cuttack until further orders,"

A translation of that order in Oriya was supplied to the appellant.

3. On February 8, 1968, the appellant submitted a supplementary petition challenging the validity of the order dated January 28, 1968. The High Court of Orissa rejected the petition filed by the appellant. Against that order with certificate granted by the High Court, this appeal has been preferred by the appellant.

4. It is not necessary to set out and refer to large number of grounds which were urged at the Bar in support of the appeal by counsel for the appellant, since in the view we take the second order dated January 28, 1968, was not passed on any fresh facts which had arisen after the date of revocation of the first order, and is on that account invalid, and an order releasing the appellant from custody must be made.

5. The relevant provisions of the Preventive Detention Act 4 of 1950 may be set out:

S. 3 (1)-"The Central Government or the State Government may-

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) * * * * *"

it is necessary, so to do, make an order directing that such person be detained."

S. 7-"(1) when a person is detained in pursuance of a detention order, the authority making the order shall as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity, of making a representation against the order to the appropriate Government.

(2) * * * * *"

Section 8 provides for the constitution of Advisory Boards, and by Section 9 the appropriate Government is enjoined to place within thirty days from the date of detention under the order before the Advisory Board constituted by it under

Section 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order. Section 10 deals with the procedure of the Advisory Boards and by Section 11 it is provided that in any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit, and in any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the

detention order and cause the person to be released forthwith. Section 11 A provides that a person whose detention has been confirmed in pursuance of the detention order shall not be detained, for a period exceeding twelve months. By Section 13 power is conferred upon the State Government and the Central Government to vacate the order of a subordinate officer made under sub-sec. (2) of Section 3, and upon the Central Government to revoke the order of a State Government. Sub-section (2) of Sec. 13 provides:

"The revocation or expiry of a detention order shall not bar the making of a fresh detention order under Section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made."

It is true that on January 18, 1968, the District Magistrate on further consideration served a translation in Oriya of the order and the grounds upon the appellant, but that was after expiry of five days as prescribed by Section 7 of the Act. This Court in Harikisan v. State of Maharashtra, 1962 Supp (2) SCR 918 = (AIR 1962 SC 911 held that where a "detenu is served with the order of detention and the grounds in English and the detenu does not know English and his request for translation of the grounds in a language which he understood was refused on the ground that the order and the grounds had been orally translated to him at the time when the order was served upon him," the guarantee under Article 22 (5) of the Constitution was violated and the detention of the detenu was illegal. It was observed by this Court at p. 924 (of SCR) = (at pp. 913-914 of AIR):

". . .. ..Cl. (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenu should have that opportunity it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenu would not amount to communicating the grounds. Communication, in this context must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the Order of Detention is based."

6. The grounds in support of the order serve on the appellant ran into fourteen typed pages and referred to his activities over a period of thirteen years, beside referring to a large number of court proceedings concerning him and other persons who were alleged to be his associates. Mere oral explanation of a complicated order of the nature made against the appellant without supplying him

the translation in script and language which he understood would in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. The order made by the District Magistrate, Cuttack not having been followed up by service within five days as provide by Section 7 (1) of the communication to him of the grounds on which the order was made must be deemed to have become invalid and any subsequent detention of the appellant was unauthorised.

7. On January 28, 1968, the State of Orissa purported to revoke the first order and made a fresh order. The validity of the fresh order dated January 28, 1968, made by the State of Orissa is challenged on the ground that it violates the express provisions of Section 13 (2) of the Preventive Detention Act. In terms that subsection authorises the making of a fresh detention order against the same person against whom the previous order has been revoked or has expired in any case where fresh facts have arisen after the date of revocation or expiry, on which the detaining authority is satisfied that such an order should be made. The clearest implication of Section 13 (2) is that after revocation or expiry of the previous order, no fresh order may issue on the grounds on which the order revoked or expired had been made. In the present case the order dated December 15, 1967, passed by the District Magistrate, Cuttack was revoked on January 28, 1968, and soon thereafter a fresh order was served upon the appellant. It is not the case of the State that any fresh facts which had arisen after the date of revocation on which the State Government was satisfied that an order under Section 3 (1) (a) (ii) may be made. There was a fresh order, but it was not based on any fresh facts.

8. Counsel for the State of Orissa contended that the detaining authority is prevented from making a fresh order on the same grounds on which the original order which had been revoked was made, provided the order revoked was a valid order initially and had not become illegal on account of failure to comply with statutory provisions like Section 7 or Section 9 of the Preventive Detention Act. Counsel says that the order which is illegal or has become illegal is not required to be revoked, for it has no legal existence, and a formal order of revocation of a previous order which has no legal existence does not fall within the terms of Section 13 (2). He strongly relies in support of this argument upon Section 13 (2) as it stood before it was amended by Act 61 of 1952:

"The revocation of a detention order shall not bar the making of a fresh detention order under Section 3 against the same person."

The phraseology of sub-section (2) of Section 13 before it was amended was explicit: there was no bar against a detaining authority making a fresh order of detention after revoking a previous order based on the same or other grounds. It contained no implication that a fresh order may be made only if it was founded on fresh grounds.

9. Counsel also relied in support of his argument upon the decision of the Federal Court in Basanta

Chandra Ghose v. Emperor, 1945 FCR 81 = (AIR 1945 FC 18); Naranjan Singh Nathawan v. State of Punjab (1) 1952 SCR 395 = (AIR 1952 SC 106); Shibban Lal v. State of Uttar Pradesh, 1954 SCR 418 = (AIR 1954 SC 179). In Basanta Chandra Ghose's case, 1945 FCR 81 = (AIR 1945 FC 81) an order was made under R. 26 of the Defence of India Rules on March 19, 1942. The order was revoked on July 3, 1942 and a fresh order for detention of the detenu was passed on that very date under Ordinance III of 1944. It was urged on behalf of the detenu that the authority was debarred, except on fresh grounds, from passing a fresh order of detention after cancellation of an earlier order, and the High Court was not justified in presuming that fresh materials must have existed when the order of July 1944 was made, Spens, C. J., rejected the contention. He observed in dealing with that ground:

"It may be that in cases in which it is open to the Court to examine the validity of the grounds of detention a decision that certain alleged grounds did not warrant a detention will preclude further detention on the same grounds. But where the earlier order of detention is held defective merely on formal grounds there is nothing to preclude a proper order of detention being based on the pre-existing grounds themselves, especially in cases in which the sufficiency of the grounds is not examinable by the Courts."

That case arose from an order of detention under Ordinance III of 1944.

10. In two latter judgments of this Court in Naranjan Singh Nathawan's case, 1952 SCR 395 = (AIR 1952 SC 106) and Shibban Lal Saksena's case, 1954 SCR 418 = (AIR 1954 SC 179) decided under the Preventive Detention Act, 1950 it was ruled that where the previous order was revoked on grounds of irregularity in the order the detaining authority was not debarred from making a fresh order complying with the requirements of law in that behalf.

11. Relying upon these cases the Solicitor-General contended that it was settled law before Section 13 (2) was amended by Act 61 of 1952 that a detaining authority may issue a fresh order after revocation of an earlier order of detention if the previous order was defective in point of form or had become unenforceable in consequence of failure to comply with the statutory provisions of the Act, and that by the Amending Act it was intended merely to affirm the existing state of law, and not to enact by implication that revocation of a defective or invalid order attracts the bar imposed by Section 13 (2). There is, in our judgment, nothing in the language used by the Parliament which supports that contention. The power of the detaining authority must be determined by reference to the language used in the statute and not by reference to any predilections about the legislative intent. There is nothing in Section 13(2) which indicates that the expression "revocation" means only revocation of an order which is otherwise valid and operative: apparently it includes cancellation of all orders invalid as well as valid. The Act authorises the executive to put severe restrictions upon the personal liberty of citizens without even the semblance of a trial and makes the subjective satisfaction of an executive authority in the first instance the sole test of competent exercise of power. We are not concerned with the wisdom of the Parliament in enacting the Act, or to determine

whether circumstances exist which necessitate the retention on the statute book of the Act which confers upon the executive extraordinary power of detention for long period without trial. But we would be loath to attribute to the plain words used by the Parliament a restricted meaning so as to make the power more harsh and its operation more stringent. The word "revocation" is not, in our judgment, capable of a restricted interpretation without any indication by the Parliament of such an intention.

12. Negligence or inaptitude of the detaining authority in making a defective Order or in failing to comply with the mandatory provisions of the Act may in some cases enure for the benefit of the detenu to which he is not entitled. But it must be remembered that the Act confers power to make a serious invasion upon the liberty of the citizen by the subjective determination of facts by an executive authority, and the Parliament has provided several safeguards against misuse of the power. The very fact that a defective order has been passed, or that an order has become invalid because of default in strictly complying with the mandatory provisions of the law bespeaks negligence on the part of the detaining authority, and the principle underlying Section 13 (2) is, in our view the outcome of insistence by the Parliament that the detaining authority shall fully apply its mind to and comply with the requirements of the statute and of insistence upon refusal to countenance slipshod exercise of power.

13. Without therefore, expressing any opinion on the question whether the order passed by the State Government on January 23, 1968, was justified, we are of the view that it was incompetent by virtue of sub-section (2) of Section 13 of the Preventive Detention Act, 1950.

Appeal allowed.