

Abdul Ghani

Vs

The State of Jammu and Kashmir

Writ Petition No. 384 of 1970

(S. M. Sikri, I. D. Dua, V. Bhargava JJ)

18.12.1970

JUDGMENT

BHARGAVA, J. -

1. Abdul Ghani had filed this petition under Article 32 of the Constitution praying for the issue of a writ of habeas corpus, alleging that his detention in jail is illegal. He had been detained in pursuance of an order passed by the District Magistrate of Poonch in the State of Jammu and Kashmir under Section 3(2), read with Section 5 of the Jammu and Kashmir Preventive Detention Act, 1964 (hereinafter referred to as "the Act"). That order is reproduced below :

"Whereas, I, Syed Mohammad Shaffi Andrabi, I.A.S., District Magistrate, Poonch, am satisfied that with a view to preventing Abdul Ghani, s/o Asdha, caste Rather, Kashmiri Muslim, r/o Chohana, p/s Surankote, District Poonch, from acting in a manner prejudicial to the security of the State, it is necessary so to do.

Now, therefore, in exercise of the powers conferred by Section 3(2), read with Section 5 of the Jammu and Kashmir Preventive Detention Act, 1964, I, Syed Mohd. Shaffi Andrabi, I.A.S., District Magistrate, Poonch, hereby direct that the said Abdul Ghani be detained in Central Jail, Jammu subject to such conditions as to maintenance of discipline and punishment for breaches of discipline as have been specified in the Jammu and Kashmir Detenu General Order of 1968.

Issued this day the 9th May, under my hand and seal.

# (Sd). S. M. S. Andrabi, I.A.S., District Magistrate, Poonch."###

The order was passed on 9th May, 1970 and on the same day, the District Magistrate issued a direction under the proviso to Section 8 of the Act which reads as follows :

"Whereas Abdul Ghani, S/o Asdha, cast, Rather, kashmiri Muslim, r/o Chohana, p/s Surankote, District Poonch, has been detained in pursuance of Order No. 38/PDA/70, dated 9th May, 1970, made by me under Section 3(2), read with Section 5 of the Jammu and Kashmir Preventive manner prejudicial to the security of the State; and

Whereas, I consider it against the public interest to disclose the ground of detention to the said Abdul Ghani, s/o Asdha, caste Rather, kashmiri muslim, r/o Chohana, p/s Surankote, District Poonch.

Now, therefore, in pursuance of Section 8, read with Section 13-A of the said Act, I hereby direct that the said Abdual Ghani be informed it is against the security of the State of disclose to him the grounds on which his detention order was made.

Issued this day the 9th of May, 1970, under my hand and seal.

# (Sd.) S. M. S. Andrabi, I.A.S., District Magistrate Poonch."##

The petitioner was actually detained on the 22nd may, 1970, in pursuance of the detention order and, on the same day, he was informed that it is against public interest to disclose to him the grounds on which the detention order was made in pursuance of the direction made by the District Magistrate, mentioned above. On this information being conveyed to him, his signatures were taken in token thereof on the back of the paper on which this direction had been issued by the District Magistrate. His detention was subsequently confirmed by the State Government, after the grounds on which the order had been made and the other particulars having bearing on the matter had been examined by the Chief Minister. On these facts, learned counsel appearing for the petitioner had challenged the validity of the detention on seven different grounds.

2. The first ground is that, when the Constitution of India was applied to the State of Jammu and Kashmir by the Order of the President under Article 370 of the Constitution, Article 35 was modified in its application to the State of Jammu and Kashmir by adding clause (c) which reads as follows :

"35(c). No law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of fifteen years from the commencement of the Said order, except as respects things done or omitted to be done before the expiration thereof."

It is by virtue of this clause (C) of Article 35 as contained in the Constitution applied to the State of Jammu and Kashmir that the provisions of the proviso to Section 8 and Section 13-A of the Act cannot be challenged on the ground of Contravening the provisions of Article 22 of the Constitution. This point was considered by a Bench of this court in Sampat Prakash v. State of Jammu and Kashmir and Another, ((1969) 2 SCR 365) where the validity of the proviso to Section 8 and of Section 13-A of the Act was upheld. Learned counsel had urged that, in that case, the Court left the question open whether Article 35(c) of the Constitution had been validly or invalidly introduced in the Constitution in its application to Jammu and Kashmir. His argument is that this Article was introduced by an Order made by the President in exercise of his powers under Article 370 and, by this provision, the fundamental right of a detenu to seek the remedy against the detention in the Supreme Court of India had been abridged, so that the application of this provision was in contravention of Article 32(4) of the Constitution and consequently void.

3. This submission made by learned counsel, on the face of it, has no substance at all. The introduction of the provision contained in Article 35(c), when applying the constitution to the State of Jammu Kashmir, did not in any way affect the right of a citizen of Jammu and Kashmir to move the Supreme Court of India for an appropriate writ under Article 32. The effect of that amendment only was that, when approaching the Supreme Court, the detenu could not challenge the validity of

the Act on the ground that any provision of it contravened the provisions of Article 22. This modification in the Constitution had, therefore, no bearing at all on Article 32(4). Further, under Article 370, the President is given the full discretion to apply the Constitution with such exceptions and modification as he may, by order, specify. It was at the initial stage, when applying the Constitution to the State of Jammu and Kashmir, that this modification was made in Article 35. This was, therefore, not a case where any provision of the constitution as already applied to Jammu and Kashmir was being modified in which case only a question could arise whether that modification was permissible. The modification at the initial stage of applying the Constitution itself cannot be challenged on the ground that it abridges any of the fundamental rights. At the time of applying the Constitution, no such fundamental rights existed in the state of Jammu and Kashmir. They came into existence only by virtue of the Order of the President applying the Constitution and at that stage they came not force in the modified form in which they were applied. This point raised by learned counsel, therefore, has no force at all.

4. The second point urged was that, in the direction given under the proviso to Section 8, the District Magistrate merely ordered that the petitioner be informed that it was not in public interest to disclose the grounds of detention to him, and failed to add a further direction that a copy of that order must be actually served on the petitioner. It was urged that a copy of that direction in writing should have been delivered to the petitioner and, for this proposition, reliance was placed on the decision of this court in *Harikisan v. The State of Maharashtra and Others*. ((1962) Supp 2 SCR 918 : AIR 1962 SC 911 : (1963) 2 SCJ 352) That case, however, has no application at all, because, in that case, the question that arose was whether it was necessary that a copy of the grounds of detention, which were quite lengthy, should be delivered to the detenu in addition to those grounds being communicated to him by being read out and translated. In the present case, under the proviso to Section 8, no grounds of detention have been served and there is no question of the petitioner knowing the grounds in detail in order to make a representation against them. He was only to be informed that it was not in the public interest to disclose the grounds. For such information, there was no need that the copy of that order must be served on him.

5. The third point urged raises a question of fact. According to the petitioner, he was never given this information and his signatures were taken on a blank sheet of paper. This argument is based on assertion of wrong facts. We have seen the original order issued under the proviso to Section 8. At the time when the information in pursuance of it was given to the petitioner, an endorsement was made on the back in Urdu reciting the fact that the petitioner had been informed as directed and it was under this endorsement that the signature of the petitioner was taken. The petitioner's signature is also in Urdu and the handwriting shows that he can read and write Urdu very well. Since he signed under the endorsement, it is clear that he must have known what he was signing and his assertion in the present case that his signatures were taken on a blank paper is totally false.

6. The fourth point urged was that the District Magistrate, when making the order for detention, did not apply his mind, because his order does not mention the existence of any materials which could have impelled him to make the order of detention of the petitioner. In the order made under Section 3 of the Act, the existence of material does not require to be mentioned. The order recites that the District Magistrate is satisfied that it is necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the security of the State. That this satisfaction was based on materials is further clarified by the order of the Government confirming the detention which mentions that the District Magistrate had, with his report, sent to the Government the grounds on which the order had been made as well as other particulars having bearing on the matter. It is, therefore, not a case where the District Magistrate can be held to have passed an order without any

material at all.

7. The fifth point urged is that, in the order of detention, the District Magistrate has, when giving the reason for making the order, stated that he is satisfied that it is necessary to do so with a view to preventing the petitioner from acting in "a" manner prejudicial to the security of the State, while Section 3 of the Act mentions that such an order can be made, if the Government or the District Magistrate is satisfied with respect to any person that it is necessary to make the order with a view to preventing him from acting in "any" manner prejudicial to the security of the State. According to learned counsel, the District Magistrate, by using the word "a" before the word "manner" instead of the word "any" as used in the statute, made an order which is outside the scope of the statute. The argument is clearly misconceived. The expression "acting in any manner" used in the Act clearly covers a case where the satisfaction of the District Magistrate is that the person, in respect of whom the order is going to be made, is to be prevented from "acting in a manner" prejudicial to the security of the State. The point raised has merely to be stated to be rejected.

8. The sixth point urged was that, in the order containing the direction that the petitioner be informed that it is not in public interest to communicate the grounds of detention to him, the District Magistrate has referred to the petitioner as one who "has been" detained, which shows that, on 9th May, 1970, when this order was made, the petitioner was already under detention, so that the plea of the petitioner that he was actually taken in custody earlier than 22nd May, 1970, is correct. Since there was no authority for earlier detention, his detention must be held to be illegal. It is true that the language used in the order under the proviso to Section 8 is incorrect. It is clear that both the order of detention under Section 3 and this direction under the proviso to Section 8 were passed by the District Magistrate on the same day one after the other. The proviso to Section 8 permits the District Magistrate to make the direction at the same time when the order of detention is made under Section 3, and this is what the District Magistrate actually did. He appears to have used the expression "has been" by mistake. It has been established by affidavits filed on behalf of the Government that, in pursuance of the order of detention, dated 9th May, 1970, the petitioner was actually detained on 22nd May, 1970 and not before the order containing the direction under the proviso to Section 8 was issued. The use of this incorrect expression does not imply that the detention was illegal.

9. The seventh and the last point urged was that, under the proviso to Section 8 of the Act, non-communication of the grounds of detention is permissible if communication of grounds is against public interest, while, in the direction made by the District Magistrate, he has stated that it is against the interests of the security of the State. This is mere quibbling. Any action in the interest of the security of the State is clearly in public interest, so that the direction was fully covered by the proviso to Section 8.

10. None of the grounds urged, thus, has any force. The detention of the petitioner is valid. The petition is dismissed.

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