

Nainmal Partap Mal Shah

Vs

Union of India and Others

Writ Petition No. 595 of 1980

(Syed M. Fazal Ali JJ)

23.06.1980

JUDGMENT

FAZAL ALI, J.–

1. The detenu-petitioner in this case was detained by an Order dated March 4, 1980 of the Central Government under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA). The only point argued before me by learned counsel for the detenu is that the grounds of detention furnished to the detenu were in English language which he did not know or understand and no translated script was supplied to him. This averment is clearly made in para 21 (Grounds) of the petition, the relevant portion of which may be extracted thus :

That the detenu was served with order of detention and grounds thereof in English. The detenu does not know English and therefore, the detenu could not understand the said grounds of detention nor he was given any copy of the grounds of detention, duly translated in vernacular language. It was the duty of the detaining authority to have supplied the detenu in a regional language or at least in Hindi.

2. Controverting this allegation, the Under-Secretary to the Government of India stated that the grounds were explained to the detenu by the prison authorities. In the affidavit the name of the authority concerned or the designation is not mentioned. Nor is there any affidavit by the person who is stated to have explained the contents of the grounds to the detenu. The Under-Secretary further suggested that as the detenu had signed number of documents in English, it must be presumed that he was fully conversant with English. This is an argument which is based on pure speculation when the detenu has expressly stated that he did not know English. Merely because he may have signed some documents it cannot be presumed, in absence of cogent material, that he had a working knowledge of English. It is also not in dispute that a translated script of the grounds were supplied to the detenu at the time when the grounds were served on him. This is undoubtedly an essential requirement, as held by this Court in *Hadibandhu Das v. District Magistrate* ((1969) 1 SCR 227 : AIR 1969 SC 43 : 1969 Cri LJ 274). In these circumstances, therefore, there has been a clear violation of the constitutional provisions of Article 22(5) so as to vitiate the order of detention. The petition is, therefore, allowed, the continued detention of the detenu being invalid, he is directed to be released forthwith.

</html