

Smt. Raziya Umar Bakshi

Vs

Union of India and Others

Writ Petition No. 631 of 1980

(Syed M. Fazal Ali JJ)

23.06.1980

ORDER

FAZAL ALI, J. –

1. The detenu was detained under sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (in short COFEPOSA) by the Government of Gujarat by its Order dated January 30, 1980. The order was passed by Mr. P. M. Shah, Deputy Secretary to the Government of Gujarat who authenticated the said order on behalf of the State Government. The detenu while making a representation to the State Government also prayed for supply of documents to him in order to make a more effective representation. These documents however were supplied on March 27, 1980 although the order of detention was itself confirmed on March 21, 1980. In the representation sent to the government, the detenu had made a specific prayer that his representation should be forwarded to the Central Government for being considered.

2. In support of the rule, Mr. Ram Jethamalani, counsel appearing for the detenu raised two points before this Court. In the first place it was submitted that the counsel on behalf of the detenu has expressly pleaded that the grounds of detention were couched in English, a language which the detenu did not understand at all and these grounds were not explained to him. A specific ground of this aspect of the matter has been taken in ground No. XIII at page 21 of the petition which may be extracted thus :

That the detenu does not know English. The grounds of detention and the order of detention were in English. No vernacular translation of the grounds was given nor they were explained to the detenu in a language known to him.

3. This allegation seems to have been denied by the respondents in para 14 of the affidavit of Mr. P. M. Shah, on behalf of the detaining authority, where he stated that the grounds were explained to the detenu in the language known to him. It was averred in para 5 that one Mr. A. K. Sharma, Police Inspector, C.I.D. (Crime Branch), Ahmedabad had explained to the detenu the order of detention and the grounds communicated to him on January 30, 1980. This affidavit, in my opinion, is wholly inadmissible in evidence. If it was a fact that Mr. Sharma had personally explained the grounds to the detenu then the respondents should have filed an affidavit of Mr. Sharma himself to show that he had actually explained the contents of the grounds to the detenu by translating the same in the language which he understood. No such affidavit is forthcoming. No contemporaneous record has been produced to show that Mr. Sharma had actually explained or translated the grounds to the detenu. The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is known to the detenu, unless the contents

of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex facie.

4. In case of Hadibandhu Das v. District Magistrate, Cuttack ((1969) 1 SCR 227 : AIR 1969 SC 43 : 1969 Cri LJ 274), it was clearly held that merely oral explanation of an order without supplying him a translation in a script or language which the detenu amounted to a denial of right of being communicated the grounds. In the instant case, it is not even alleged in the affidavit of Mr. Shah that any translation or translated script of the grounds was furnished to the detenu.

5. In this view of the matter, the detention becomes invalid on this ground alone. I would however like to observe that in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands. A bare denial at the stage when habeas corpus petition is filed in the court by the detaining authority that these formalities were observed would be of no consequence particularly when it is not supported by any document or by any affidavit of the person who had done the job of explaining or translation. We have pointed out in several cases that the courts frown on detention without trial and insist on the strict compliance of the constitutional safeguards enshrined in Article 22(5) to the letter of the law, because a noncompliance of these safeguards would itself be sufficient to vitiate the order of detention. Despite our repeated observations, unfortunately, however the detaining authority continues to pass orders of detention in a casual or cavalier fashion with the result that the courts are compelled to releases the detenus. We hope and trust that in future the detaining authorities should fully apply their mind so as to result in a strict compliance of the constitutional safeguards contained in the Constitution, more particularly because the liberty of the subject is in peril.

6. Another ground taken by Mr. Ram Jethamalani in support of the rule is that although the detenu had made a specific prayer in his representation of the State Government that his representation should be forwarded to the Central Government for consideration under Section 11 of the Act, yet the detaining authority did not choose to forward the representation to the Central Government at all. This position is admitted and the defence taken is that as the detenu had himself sent a copy to the Central Government, the detaining authority did not think it necessary to forward the representation to the Central Government. This defence is wholly unacceptable. Section 11 of the Act confers a constitutional right on the detenu to have his representation considered by the Central Government. It is true that the Central Government has a discretion to revoke or confirm the detention but the detenu has undoubtedly a right that his representation should be considered by the Central Government for whatever worth it is. The mere fact that the detenu had sent a copy to the Central Government does not absolve the detaining authority from the statutory duty of forwarding the representation of the detenu to the Central Government.

7. For these reasons therefore I am satisfied that the continued detention of the detenu in this case is legally invalid. I therefore allow this application and direct that the detenu be released forthwith.

8. As the detenu has now been transferred to Bhavnagar, the order be sent to the jailor at Bhavnagar.

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