

Ganga Ramchand Bharvani

Vs

Under-Secretary to The Government of Maharashtra and Others

Writ Petitions (Criminal) Nos. 434-435 of 1980

(R. S. Sarkaria, R. S. Pathak JJ)

01.08.1980

JUDGMENT

SARKARIA, J. –

1. This judgment deals with two writ petitions for the issue of a writ of habeas corpus, which were allowed by us a short order, dated April 23, 1980.
2. In Writ Petition 434 of 1980, the detenu is one Indru Ramchand Bharvani; while in Writ Petition 435 of 1980, the detenu is Indru's father, Ram Chand Bharvani. The two detenus Indru and Ram Chand, along with others, are carrying on business in diamonds and precious stones in partnership under the style of "M/s. Gems Impex Corporation", 35, New Marine Lines, Bombay, since 1971.
3. On November 16, 1979, the Customs Officers at Bombay raided the premises of the said firm and in the course of the raid, seized diamonds and pearls, worth about Rs. 55 lakhs and, also, some jewellery and Rs. 1,40,000 in Indian currency and two gold sovereign coins. On the following day, the Customs raided the residential premises of the son, Indru, and seized two cameras and three wrist watches worth about Rs. 1.50 lakhs.
4. The detenus were arrested on November 23, 1979 and interrogated. During interrogation, the detenus claimed that the gems and other articles seized were not smuggled goods but were local materials, locally acquired. They also gave the names of four persons from whom these gems had been acquired. Both the father and the son were arrested and were produced before a magistrate. They were released on heavy bail subject to the condition that they would attend daily before the Customs Officers and cooperate in the investigation. This condition was later on relaxed.
5. On February 16, 1980, an order of detention, dated February 15, 1980, purporting to have been made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, called COFEPOSA) by the State Government was served on the detenus. This order was authenticated by the Under-Secretary to the State Government. The grounds of detention were also served on the detenus along with the order of detention on February 16, 1980.
6. On February 18, 1980, the wife of the detenu Ram Chand, addressed a letter to the first respondent (Under-Secretary to the Government of Maharashtra), requesting him to furnish the detenu with the material relied upon by the detaining authority in the grounds of detention. On March 25, 1980, detenu received a letter, dated March 14, 1980, from the State Government, declining the request for supply of copies to the detenu. Prior to that on March 12, 1980, the detenus

moved this Court by petitions under Article 32 of the Constitution, for the issue of a writ of habeas corpus.

7. On March 11, 1980, the detenu had also sent a petition through the Central Government, complaining of the non-supply of copies of the necessary documents. They also made, by that petition, such representations as they could, praying for revocation of the order of their detention. On April 3, 1980, the Central Government wrote to the detenus that their request for revocation had been rejected. The Central Government, however, advised the State Government to furnish the detenus with the copies of the required documents. As a result, on April 3, 1980 copies were received by the detenus from the State Government under their covering letter, dated March 31, 1980.

8. On March 24, 1980, the detenu also made a representation to the State Government which, according to the information furnished at the Bar by Mr. Phadke appearing for respondent 1, was declined.

9. Shri Ram Jethmalani, appearing for the detenus, challenges the detention mainly on these grounds :

(1) The order of detention, purporting to have been signed by Shri Salvi, Secretary in the Home Department, to the Government of Maharashtra, is void because the concerned Minister of the State Government never, in fact, passed any such order and under the rules of business framed by the Governor under Article 166 of the Constitution Shri Salvi had no authority to pass the order of detention.

(2) The detaining authority never applied its mind to the earlier statements of four persons from whom the detenus claimed to have acquired the gems in question, and in which they had on the basis of documentary evidence supported the contention of the detenus. Further, there was no evidence of smuggling in this case at all and the detaining authority committed illegality inasmuch as it relied on presumption under Section 123 of the Customs Act. The use of this presumption was not available to the detaining authority in the exercise of its jurisdiction under COFEPOSA. This shows that there was total non-application of mind on the part of the detaining authority.

(3) The detenus made a written request to the detaining authority on February 18, 1980 for supply of the copies of the statements and documents relied upon in the grounds of detention, to enable them to make an effective representation. The detaining authority, however, callously and deliberately refused to supply the copies and conveyed rejection of this request by a letter, dated March 14, 1980, which, in fact, was received by the detenus on March 25, 1980. It was on the direction of the Central Government that the State Government supplied the copies of some of the statements to the detenus on April 3, 1980. The detenu had a constitutional right to be afforded a fair and full opportunity of making an effective representation against his detention. The refusal and the belated supply of these copies had violated that right of the detenu. Even now, copies of the earliest statements of the four persons, as is apparent from their statements, have not been supplied to the detenus. On account of this delay, the detention is vitiated.

(4) The detenu's representation dated March 11, 1980, made to the Central

Government for revocation of the detention under Section 11 of the COFEPOSA has been wrongly rejected by an unauthorised person. Under the Rules of Business, only the Revenue Minister of the Union Government was authorised to deal with and reject that representation. But it seems that the representation was never put up before the Minister.

(5) The representation, dated March 24, 1980, made by the detenus to the detaining authority is now reported to have been rejected on April 8, 1980. But the question still remains as to who passed the order of rejection. If this representation was rejected by a person other than the Minister who alone was competent to do so, under the Maharashtra Rules of Business framed under Article 166 of the Constitution, then such rejection would be illegal.

10. As regards (1), Shri Phadke, appearing for the respondent-State, has submitted for the perusal of the court the original record from which it is apparent that the matter was put up by the Secretary, Shri P. C. Salvi to the Minister concerned and the order of detention was, in fact, passed by the Minister. The first contention is therefore, devoid of merit.

11. Similarly, it is clear from the office records that the representation, dated March 24, 1980, of the detenus was considered by the Adviser to the Governor of Maharashtra, the State then being under President's rule. The Adviser was competent under the Rules of Business framed under Article 166 to deal with the reject such representations. We, therefore, do not find any force in contention (5), either.

12. Indeed, Shri Jethmalani has concentrated mainly on contention (3).

13. In reply to this contention, Shri Phadke submits that the grounds of detention were as elaborate as possible, that the substance of the statements, of which copies were for by the detenus, had been incorporated in those 'grounds' which were served on the detenus, that in such a situation, the 'grounds' served on the detenu, were more than sufficient to enable him to make an effective representation. It is contended that under the Constitution, the detenu has got a right to be furnished only with the grounds of detention, that is, conclusions drawn from and not matters of detail or any other matter which is not referred to or relied upon in the grounds of detention. This, according to Shri Phadke, was one of the reasons that impelled the State Government to refuse the supply of the copies to the detenu. The second reason, according to the counsel was that the supply of the further information would have exposed the informants to bodily harm at the hands of the agents of the detenus, that the matter being still under investigation, the disclosure at that stage of the information would have adversely affected the investigation and harmed public interest.

14. Let us at the outset by very clear about the precise factual position. The request for copies was made by the detenus on February 18, 1980. After a delay of more than three weeks, this request was rejected by the State Government and that rejection was communicated to the detenu, by letter dated March 14, 1980. This letter was received by the detenu only on March 25, 1980. This delay in transit also, was unusual and inordinate. On March 27, 1980, the Central Government advised the State Government to supply the copies. Thereupon, it seems, that within three days the copies were put in a course of communication to the detenus by the State Government under their covering letter, dated March 31, 1980, and were actually received by the detenus on April 3, 1980. The very fact that soon after the directions of the Central Government copies were ready and despatched to the detenus within three days thereof, shows that there was no physical difficulty in preparing and

supplying the copies to the detenus, with due promptitude.

15. To justify the refusal to supply the copies, the stand taken by the State Government in the affidavit filed on their behalf by Shri P. C. Salvi, Secretary to the Government, Home Department, is as follows :

(a) Looking at the exhaustive grounds furnished to the detenu and also the fact that the four persons named therein had denied before the Customs Officers that they sold the diamonds in question or gave them on 'jhangad' basis was communicated to the detenu it was not necessary to furnish any copies of statements and documents to the detenu to enable him to make an effective representation against his detention.

(b) After the application on behalf of the detenu dated February 18, 1980 was received, a communication dated February 27, 1980 was received from the Collector of Customs (Preventive), Bombay. This letter clearly suggested that copies should not be given - Annexure "A".

Annexure "A" to the affidavit is a letter, dated February 27, 1980, from the Collector of Customs, Bombay, addressed to the Secretary to the Government of Maharashtra, Home Department, in reply to the latter's letter, dated February 19, 1980. In para 2 of this letter, the Collector has stated :

In the case in which the captioned detenus are involved, investigations to unearth the conspiracy and find out the other persons involved in it, are in progress. It appears from the material under seizure that the case has wide ramifications, which need to be investigated from various angles. Hence, furnishing copies of the statements and documents at this stage would be detrimental to the investigation in progress from prosecution point of view and might even endanger the life of such of those witnesses who have either deposed against the detenus or provided clues. Under these circumstances, furnishing of copies of statements and documents relied upon in the grounds for detaining the aforesaid accused at this stage, would not be in public interest. However, we have no objection for furnishing copies of the Panchnamas.

In this affidavit, Shri Salvi has not stated that he had personally applied his mind to what the Collector had said in his letter, dated February 27, 1980, nor has he affirmed that he had intimated to the detenu that the copies had been refused in exercise of the discretion under Article 22(6) of the Constitution, on the ground that the disclosure of that information was, in the opinion of the government, not in the public interest.

16. It is well settled that "the constitutional imperatives enacted in Article 22(5) of the Constitution are two-fold : (i) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order has been made; and (ii) the detaining authority must afford the detenu the earliest opportunity of making a representation against the detention order. In the context, 'grounds' does not merely mean a recital or reproduction of a ground of satisfaction of the authority in the language of Section 3; nor is its connotation restricted to a bare statement of conclusion of fact. "Nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu." This is the ratio of the decision in *Khudiram Das v. State of W. B.* ((1975) 2 SCR 832 : (1975) 2 SCC 81, 88 : 1975 SCC (Cri) 435, 442), to which one of us (Sarkaria,

J.) was a party. This principle was enunciated after an exhaustive survey of the authorities by Bhagwati, J. who delivered the opinion of the court. It is, therefore, not necessary to burden this judgment by noticing all the other decisions which were examined in that case. The mere fact that the grounds of detention served on the detenu are elaborate, does not absolve the detaining authority from its constitutional responsibility to supply all the basic facts and materials relied upon in the grounds to the detenu. In the instant case, the grounds contain only the substance of the statements, while the detenu had asked for copies of the full text of those statements. It is submitted by the learned counsel for the petitioner that in the absence of the full texts of these statements which had been referred to and relied upon in the 'grounds' of detention, the detenus could not make an effective representation and there is disobedience of the second constitutional imperative pointed out in Khudiram case ((1975) 2 SCR 832 : (1975) 2 SCC 81, 88 : 1975 SCC (Cri) 435, 442). There is merit in this submission.

17. The second reason for non-supply of the copies given by Shri Salvi, it may be recalled, is that the Collector had said that the supply of the copies at that stage would be detrimental to the investigation and public interest. This "so-called" reason also was unsustainable in law. Shri Salvi does not appear to have applied his mind to the question whether or not the supply of these copies would be injurious to public interest. He appears to have mechanically endorsed what had been written to him by the Collector in his letter, dated February 27, 1980. The detenu had asked for copies of three kinds of documents : (a) His own statements which, according to the grounds of detention, were inconsistent and contradictory to each other; (b) Copies of the statements of his father, who is the detenu in Writ Petition 435 of 1980. These statements, also, according to the grounds of detention, were mutually inconsistent; (c) The full texts of the statements made by the four persons, whose names, particulars and substance of their statements were mentioned in the grounds of detention.

18. As regards the first two categories of statements the substance of which was already in the knowledge of the deponents, no question of their disclosure being harmful to the public interest could arise. Nor could the supply of the full text of those statements, by any stretch of imagination, be said to be such that it might endanger the lives of the deponents. Regarding category (c), the substance of the statements of the persons mentioned in the grounds of detention had already been disclosed to the detenus. It was therefore, not reasonably possible to say that the disclosure of the full texts of their statements would endanger their safety or harm public interest. In the copies of the statements of those persons which were ultimately supplied to the detenus, after undue delay on the direction of the Central Government, there is a reference to the earlier statements of these four persons in which they had on the basis of some account books and documents, supported the contention of the detenus that the latter had acquired the gems in question from those persons. The statements supplied to the detenus are their subsequent statements in which they have completely resiled from their earlier statements. It is obvious that the supply of the earlier statements which were entirely in favour of the detenus and the full texts of which have been withheld, could not, by any reckoning, expose those persons to any harm or danger at the hands of the agents or partisans of the detenus.

19. Be that as it may, if any part of the statements of those witnesses had to be withheld in public interest, the appropriate authority could, after due application of its own mind, make an order under clause (6) of Article 22 of the Constitution, withholding the supply of those portions of statements after satisfying itself that their disclosure would be against the public interest. In the instant case, the detaining authority, without applying its mind to the nature of the documents, the copies of which were asked for by the detenus, mechanically refused as desired by the Collector, to supply the copies

of all the documents. Indeed, it was on receiving a direction from the Central Government that the copies were supplied. On account of this chill indifference and arbitrary refusal, the detenu, who had applied for copies on February 18, 1980, could get the same only on March 27, 1980, i.e., after more than one month. Thus, there was unreasonable delay of more than a month in supplying the copies to the detenus, of the material that had been relied upon or referred to in the 'grounds' of detention. There was thus an infraction of the constitutional imperative that in addition to the supply of the grounds of detention, all the basic material relied upon or referred to in those 'grounds' must be supplied to the detenu with reasonable expedition to enable him to make a full and effective representation at the earliest. Of course, what is "reasonable expedition" is a question of fact depending upon the circumstances of the particular case. In the peculiar facts of the instant case, we are of opinion that the delay of more than a month, in supplying the copies of the basic materials and documents to the detenus has vitiated the detention.

20. It was on this short ground, we, by our Order, dated April 23, 1980, had allowed the writ petitions and directed the release of the detenus.

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