

Mrs. Hamida Sarfaraz Qureishi

Vs

M. S. Kasbekar and Others

Criminal Writ Petition, No. 3403 of 1980

(R. S. Sarkaria, Chinnappa Reddy JJ)

11.09.1980

JUDGMENT

SARKARIA, J. –

1. This is petition for issue of a writ of habeas corpus. The petitioner is the wife of the detenu, Sarfaraz Maqbool Qureishi who has been detained under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980) (for short, called PREBLACT). The order was issued by the Commissioner of Police, Bombay on May 28, 1980. It was served on the detenu, on May 29, 1980 when, according to the averments in the writ petition, he was an indoor patient in the King George Hospital, Lucknow, struggling for his life, due to a massive heart attack. The grounds of detention were also supplied to him on the same day.

2. The detenu is a dealer in kerosene.

3. Mr. Jethmalani, appearing for the petitioner, has canvassed five points before us. The first point is that a representation dated June 27, 1980 was addressed to the detaining authority, Commissioner of Police, Bombay, but the latter refused to consider the same and this amounts to an infringement of the constitutional obligation implied under Article 22(5) of the Constitution as well as Section 4 (sic 8) of the Act. The second point urged by the learned counsel is that the detenu had in his representation, expressed a desire that he be heard in person by the Advisory Board; that this right was denied to him, inasmuch as on the day on which the Advisory board was to hold its meeting, a police officer at about 1 p.m. came to the Prince Ali Khan Hospital and informed the detenu's wife that the detenu could appear before the Advisory Board in the afternoon, that the detenu was then in the Intensive Care Unit of the Hospital struggling to survive from a massive heart attack, and as such, incapable of moving out and appearing before the Board. It is stressed that the detenu was in such a disabled condition that he could not even communicate with anybody.

4. We will take up the second point first, because the petition can be disposed of on this very ground.

5. Clause (4)(a) of Article 22 of the Constitution mandates that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months, unless an Advisory Board consisting of persons possessing the qualifications specified therein, has reported before the expiry of the said period of three months that there is in its opinion sufficient cause for such detention. Clause (5) of the Article requires that the grounds of detention shall be communicated to the detenu "as soon as may be" and he shall be afforded "the earliest opportunity" of making a representation against the order of his detention. Clause (7)(c) of the Article empowers

Parliament to prescribe by law the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4). In exercise of its power under Entry 3 of List III of Schedule VII Parliament has enacted the PREBLACT (Act 7 of 1980). In compliance with the mandate in clause (4)(a) of Article 22, Section 9 of the Act provides for the constitution of Advisory Boards and matters connected therewith. In accordance with clause (7)(c) of Article 22, Section 11 of the Act prescribes procedure of Advisory Boards. Sub-section (1) of the section, inter alia, provides that if in any particular case, the person concerned (detenu) desires to be heard in person, the Advisory Board shall, after hearing in person, submit its report to the appropriate Government within seven weeks from the date of detention.

6. Section 12(2) of the Act provides that in any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention, the appropriate Government shall revoke the detention order and cause the detenu to be released forthwith.

7. In the instant case, the detenu had through his representation dated June 27, 1980 to the detaining authority, expressed a desire to appear before the Advisory Board and be heard in person. Under Section 11(1) of the PREBLACT, therefore, the authority concerned was peremptorily required to afford to the detenu a proper opportunity to be heard in person by the Advisory Board. But in the instant case, such an opportunity was not given to the detenu, despite request. Firstly, no reasonable notice about the date of meeting of the Advisory Board was given to the detenu. It was only about one or two hours before the scheduled time of the meeting of the Advisory Board that a police officer went to the hospital in which the detenu was confined, to inform about the meeting of the Board. Even that information was given only to the wife of the detenu for further transmission to the detenu who was then precariously ill and disabled from doing anything. Thus, the so called opportunity of being heard in person by the Advisory Board, was a farce, and amounted to a negation of the right conferred on him under Section 11(1) of the Act.

8. Mr. Mridul appearing for the respondent contended that the detenu should have asked for extension of the date of hearing and for a short adjournment of hearing by the Advisory Board, but he made no such request. The argument is devoid of merit. The detenu was in the Intensive Care Unit of the Hospital under Heart attack and was in the circumstances, physically incapable of doing anything of the kind.

9. These, then are the reasons for our Order dated September 10, 1980, whereby we had allowed the writ petition and directed the release of the detenu.

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