

Surjeet Singh

Vs

Union of India and Others

Kulwant Singh

Vs

Union of India and Others

Writ Petitions Nos. 5931 and 5932 of 1980

(A.D. Koshal, Baharul Islam JJ)

12.03.1981

JUDGMENT

KOSHAL, J. -

1. By this order we shall dispose of Criminal Writ Petitions 5931 and 5932 of 1980 in each of which the contention raised by the learned counsel for the petitioners is the same.
2. In Criminal Writ Petition 5931 of 1980, the petition is one Surjeet Singh while the other petition has been filed by a person named Kulwant Singh.
3. Each of the petitioners was detained on October 13, 1980 under the provisions of the National Security Ordinance which now stands replaced by the National Security Act. They were arrested on that date and on each of the a police officer served an order of detention along with the ground on which it was based, both the documents being in English. It is the case of the State, and the same has not been controverted before us, that the police officer effecting the service of the two documents explained to the concerned detenu in Hindi what their contents were.
4. Dr. N. M. Ghatate, learned counsel for the petitioners has challenged the detention of the two petitioners with the contention that English was not a language which either of them understood, that this factor rendered it necessary for the grounds of detention to be served of them in Hindi which was their mother tongue and that the same having not been done, there was in law no communication such grounds to either of them.
5. After hearing learned counsel for the parties, we have no hesitation in holding that the challenge to the detention is well-founded in view of the dicta of this Court in Harikisan v. State of Maharashtra, Hadibandhu Das. v. District Magistrate, Cuttack and Nainmal Partap Mal Shah v. Union of India.
6. In the first of these cases an order under the Preventive Detention Act (Central Act 4 of 1950) was under challenge. The grounds of detention had been provided to the detenu in English and a request by him for a translation of the same was turned down. The High Court was of the opinion that so long as English continued to be the official language of the State, the communication of the

grounds of detention in the language was enough compliance with the requirements of the constitution. This opinion did not find favour with Sinha, C. J., who delivered the judgment of this Court and observed :

If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the constitution, the detenu must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.

The Constitution has guaranteed freedom of movement throughout the territory of India and has laid down detailed rules as to arrest and detention. It has also by way of limitations upon the freedom of personal liberty, recognised the right of the State to legislate for preventive detention, subject to certain safeguards in favour of the detained person, as laid down in clauses (4) and (5) of Article 22. One of those safeguards is that the detained person has the right to be communicated the grounds on which the order of detention has been made against him, in order that he may be able to make the representation against the order of detention. In our opinion, in the circumstances of this case, it has not been shown that the appellant had the opportunity, which the law contemplates in his favour, of making an effective representation against his detention. On this ground alone we declare his detention illegal, and set aside the order of the High court and the order of detention passed against him.

7. In Hadibandhu case also an order under the Preventive Detention Act was impugned with the contention that the grounds of detention had not been supplied to the detenu in a language and script which he understood. The order was struck down by this Court for the reasons appearing in the following passage :

The grounds in support of the order served on the appellant ran into fourteen typed pages and referred to his activities over a period of thirteen years, beside referring to a large number of court proceedings concerning him and other persons who were alleged to be his associates. Mere oral explanation of a complicated order of the nature made against the appellant without supplying him the translation in script and language which he understood would, in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.

8. In Nainmal case, Fazal Ali, J., who followed Hadibandhu case, held that the communication of the grounds of detention in a language understood by the detenu was an essential requirement for the validity of a detention order which, in the absence of such requirement being fulfilled, would be repugnant to the provisions of Article 22(5) of the Constitution and would thus stand vitiated. And that is a view which has been consistently held by this Court.

9. The facts with which we are here concerned, insofar as they are relevant to the decision of the point canvassed before us, are on all fours with those of the three cases cited above. As already pointed out, the grounds of detention were supplied to the two petitioners in the English language - a language with which they were not conversant. The service of the grounds on them in that manner could not be considered under the circumstances to be effective communication to them thereof so as to afford to them a real opportunity of making a representation against the order of detention.

10. It is true, as pointed out by the learned Additional solicitor-General, that in Hadibandhu case the grounds of detention covered numerous pages and related to a long period of time and, according to this Court, contained "a complicated order". The complicated nature or the length of the document, however, was only mentioned incidentally by this Court and was not meant to be a sine qua non for the fulfilment of the requirement that the grounds must be supplied to the detenu in a language which he understood before the service on him of such grounds could be considered a communication thereof to him for the purposes of the Preventive Detention Act.

11. In the result both the petitions succeed and are accepted. The detention of each of the petitioners is held to be repugnant to the provisions of Article 22(5) of the Constitution and is struck down on that account. Both of them are directed to be set at liberty forthwith, insofar as these petitions are concerned.

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