

Hem Lall Bhandari

Vs

State of Sikkim and Others

Writ Petition (Criminal) No. 567 of 1986

(O. Chinnappa Reddy, V. Khalid JJ)

28.01.1987

JUDGMENT

V. KHALID, J. -

1. Shorn of details regarding allegations of mala fides unsupported by acceptable evidence, the only question that falls for consideration in this writ petition is whether the order of detention is liable to be quashed on the ground that the mandatory requirements, contained in Section 8(1) of the National Security Act, 1980 (hereinafter referred to as the 'Act') have not been complied with.

2. The facts : The petitioner is one Hem Lall Bhandari residing in Bombay, practising law there. The first respondent is the State of Sikkim through its Home Secretary, the second respondent, the Delhi Administration, Police Department and the third respondent, the Union of India through the Home Secretary. The petitioner states that he had a humble beginning and that he by dint of hard labour qualified himself in law and secured significant success academically. It is alleged that the Chief Minister of Sikkim wanted him to join politics and that he incurred the wrath of Chief Minister because of his disinclination to accept this suggestion and that the order of detention was passed against him consequently.

3. On September 29, 1986, at 10.15 p.m. three officers of the Sikkim Police Service accompanied by two officers of the Bombay Police went to the residence of the petitioner and took him to the office of the CID, Bombay where he was served with a copy of the detention order. He was detained in the police lock-up at the CID office and his request to contract a lawyer was not granted. He was kept in custody till 5.30 p.m. on September 30, 1986. At 6 p.m. on that day, he was permitted to go to his office to collect some papers. There he contacted Shri T. R. Andhyarujina, senior counsel and informed him that he was being taken to the Bombay airport to be flown by flight IC-183, to Delhi. The senior counsel requested the police officers to permit him to approach the Bombay High Court before taking the petitioner to Delhi. This request was not granted. However, he filed a habeas corpus petition for the release of the petitioner in the Bombay High Court on the same day and P. B. Sawant, J. stayed the order of detention as per the following order at 7.30 p.m. :

There are no grounds of detention furnished, nor any documents, alongwith the order. The grounds for detention have to be served alongwith the order. The order is prima facie illegal. It is, therefore, stayed till further orders from this court.

4. This order could not be served on the detaining officer as the plane carrying the petitioner took off for Delhi at 8.30 p.m. Meanwhile at 11.30 p.m. Shri Andhyarujina telephonically informed a Delhi advocate, Dr. Mrs. Swami, of the order passed by the Bombay High Court. On receipt of this

information, she informed the officer on duty at the airport, of the order of Bombay High Court. Nothing happened. Therefore, a petition was filed before this Court on October 1, 1986 at 2.30 p.m. on which this Court passed an order directing that the petitioner be detained in Delhi and should not be removed from Delhi by the respondents and further that he should be produced before the Chief Metropolitan Magistrate who might release him on bail if he thought it fit. On October 2, 1986, the petitioner was brought before the Chief Metropolitan Magistrate who after hearing the parties granted bail to the petitioner. The petitioner was released the same evening at 4.30 p.m. on furnishing a bond of a sum of Rs. 10,000 with a surety in the like sum. The petitioner returned to Bombay the next day.

5. The address of the petitioner is well known to the respondents. No serious attempt was made by them between October 2, 1986 and October 14, 1986 to serve the petitioner with the grounds of detention. On October 6, 1986, the petitioner attended the Bombay High Court in connection with the writ petition filed there and has been regularly attending his office and carrying on his professional duties both in the office and in the High Court. On October 14, 1986, the petitioner was served with the impugned order of detention, the grounds of detention and the supporting documents. The case put forward by the petitioner's counsel is that the delay caused in serving the grounds of detention, from October 2, 1986 to October 14, 1986, clearly violates Section 8(1) of the Act and on that ground the order of detention has to be quashed.

6. To meet the case of the petitioner that the grounds of detention were served on him only 15 days after the order of detention a counter-affidavit is filed, sworn to by the Home Secretary, Government of Sikkim. We extract below the relevant portion of the counter-affidavit :

On October 2, 1986, the petitioner was produced in the Court of the Chief Metropolitan Magistrate. The petitioner was released on bail in pursuance of the order of this Hon'ble Court.

On October 3, 1986, the grounds of detention alongwith the materials were handed over to Shri K. P. Subba, for service on the petitioner. Shri K. P. Subba, having learnt from Mrs. Swami, who was his surety, that the petitioner left for Bombay on the same day. On October 4, 1986, the police officers could not contact the petitioner in his address. He waited on October 5, 1986 also but he did not find the petitioner at his house address or in the court. He returned to New Delhi on October 6, 1986. The Writ Petition No. 1015 of 1986 was heard by Hon'ble Mr. Justice Sawant and Justice Kolse Patil and by order dated October 14, 1986 discharged the rule.

The grounds of detention could not be served within the period of 5 days or 10 days as per Section 8 of the Act, because the petitioner was released on bail by the Chief Metropolitan Magistrate on October 2, 1986 and the petitioner avoided the police officer. The petitioner received the grounds alongwith the material on October 14, 1986 at Bombay as per the orders of the High Court.

Shri K. P. Subba, the police officer waited till October 6, 1986 at Bombay and having found that he was not able to contact the petitioner returned to Gangtok. Thus the grounds could not be served on the petitioner within the stipulated period as the petitioner was not under detention from October 2, 1986 onwards. Had the petitioner been in detention it would have been possible for me to get the grounds served on the petitioner on October 3, 1986 itself. I respectfully submit that it is the petitioner who rendered every effort on my part to serve the grounds futile taking advantage of the various orders of the High Court of Bombay and this Hon'ble Court. I did not know that the writ petition filed by the petitioner was posted in the Bombay High Court on October 6, 1986. No notice

was served on me or on the State Government about the posting of the writ petition in the Bombay High Court on October 6, 1986. The only communication received was that the said case was posted on October 14, 1986. Our Advocate General appeared on the day in the High Court of Bombay. I respectfully submit that the petitioner cannot be allowed to contend that the provisions of Section 8 of the Act were violated by me in view of the fact that the petitioner was not in detention and was enlarged on bail by the Chief Metropolitan Magistrate, New Delhi under the orders of this Court. Therefore, I respectfully submit that there is no violation on my part of the provisions of Section 8 of the Act.

7. The petitioner has made various allegations of mala fides against the Chief Minister of Sikkim. These allegations are not supported by any acceptable evidence. Therefore, we do not propose to consider them. Much was made of the fact that the Chief Minister has not filed a counter-affidavit himself denying the allegations. According to us it is not necessary since the allegations are wide in nature and are bereft of details. We do not think it necessary in all cases to call upon persons placed in high positions to controvert allegations made against them by filing affidavits unless the allegations are specific, pointed and necessary to be controverted. We, therefore, propose to confine ourselves purely to the question whether there has been a violation of the mandatory provisions contained in Section 8 of the Act or not.

8. The order of the Home Secretary directing the petitioner's detention under Section 3 of the Act was made on September 25, 1986 and grounds of detention were prepared on the same date. The petitioner was served with the detention order on September 29, 1986 at 10.15 p.m. He was taken to the Bombay police lock-up that day. On September 30, 1986 at 6 p.m. he was taken to his office in Bombay. On the same day, the Bombay High Court passed an order at 7.30 p.m. staying the detention order. The plane carrying the petitioner left Bombay for Delhi on the same day at 8.30 p.m. The detaining officers were informed of the order of the Bombay High Court on October 1, 1986 at 5 p.m. On the same day at 3.30 p.m. the Supreme Court directed that the petitioner shall not be taken out of Delhi. On October 2, 1986, the Chief Metropolitan Magistrate directed the petitioner's release on bail. On October 14, 1986, the petitioner was served with grounds of detention. These facts are not disputed.

9. Let us see how the concerned officer explains the delay caused in serving the grounds of detention on the petitioner. But before doing so we will read Section 8(1) of the Act.

8(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

10. A bare reading of the section shows that it is obligatory on the detaining officer to communicate to the detenu, the grounds on which the order of detention has been made, promptly. This has to be done as soon as possible and ordinarily not later than 5 days. The detaining authority is permitted to exceed this limitation of 5 days in exceptional circumstances. The grounds of detention, under exceptional circumstances, can be communicated to the detenu within a period not later than 15 days from the date of detention but when the detaining authority takes time longer than 5 days he has to record reasons why the grounds of detention could not be communicated within 5 days. It is clear in this case that the grounds of detention were communicated to the petitioner long after 10 days. There is no record evidencing any reason for this long delay.

11. We have therefore to examine the reasons why the grounds of detention were given only on October 14, 1986. It is stated in the counter-affidavit sworn to by the Home Secretary that the grounds of detention were handed over to Shri K. P. Subba for service on the petitioner on October 3, 1986. This K. P. Subba has not chosen to file an affidavit in this case to inform this Court as to what really happened with the grounds of detention given to him for service on the petitioner. It is stated in the counter-affidavit that Shri Subba learnt from the petitioner's Advocate, Mrs. Swami, that the petitioner had left for Bombay. The counter-affidavit continues to say that on October 4, 1986, the 'police officers' could not contact the petitioner in his home address. It is not evident from this statement as to which officer tried to contact the petitioner in his home address on October 4, 1986. It is further stated that he waited on October 5, 1986 also but he did not find the petitioner at his house address or in the court. The counter-affidavit is not sufficiently communicative as to who this police officer was. The counsel for the petitioner tried to impress upon us the fact that this statement cannot be true because October 5, 1986 happens to be a Sunday and that no police officer would try to contact an advocate in court on Sunday. This police officer is said to have returned to New Delhi on October 6, 1986. The counter-affidavit is eloquently silent about what happened after October 6, 1986. The counter-affidavit thereafter discloses the fact that Shri K. P. Subba, the police officer, waited till October 6, 1986 in Bombay and returned to Gangtok since he was not able to contact the petitioner. The complaint of the officer is that the petitioner made it impossible for him to serve the grounds of detention. Every attempt on the part of the officer to serve the petitioner with grounds of detention were rendered futile by taking advantage of the orders of the High Court and the Supreme Court. It is further stated in the counter-affidavit that the grounds of detention could not be served since the petitioner was released on bail and was not under detention from October 2, 1986 onwards.

12. We have considered the averments in the counter-affidavit carefully. We have no hesitation to hold that there has been a flagrant violation of the mandatory provisions of Section 8 in this case. It is not permissible, in matters relating to the personal liberty and freedom of a citizen, to take either a liberal or a generous view of the lapses on the part of the officers. In matters where the liberty of the citizens is involved, it is necessary for the officers to act with utmost expedition and in strict compliance with the mandatory provisions of law. Expeditious action is insisted upon as a safeguard against manipulation.

13. In this case there is no acceptable or satisfactory explanation as to what the officer or the officers did after October 6, 1986. This inaction after October 6, 1986 till October 14, 1986, by itself is sufficient for us to hold that Section 8(1) has been violated by the officer concerned and on that ground alone the order of detention has to be quashed.

14. An attempt was made by the counsel for the respondents to contend that the delay in communicating the grounds of detention caused in this case has to be condoned and the rigour of the section relaxed since the detenu had been released on October 2, 1986, and hence was not in detention. This according to us is specious plea which cannot stand legal scrutiny. If this contention is to be extended to its logical conclusion it would be clothing the authorities with powers to delay communication of the grounds of detention indefinitely, whenever a detenu secures from a court of law either bail or parole. To accept this contention would be to destroy the effect of the mandate of the section. As indicated earlier, the mandate enacted in the section is a safety valve for a citizen who is robbed of his liberty and to disable the authorities from manipulating the grounds of detention. The section has to be interpreted literally. No relaxation is permissible. If the original time of 5 days has to be extended, such extension must be supported by an order recording reasons. If reasons are not so recorded the order of detention will automatically fail. Even if reasons are

recorded they have to inspire confidence in the court and are subject to legal scrutiny. If the reasons are unsatisfactory courts would still quash the order of detention.

15. On a consideration of the materials placed before us we hold that the order of detention is bad and we quash the same. Since the petitioner is not in detention there is no need to pass any order to direct his release.

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