

Union of India and others

Vs

Mohammed Ahmed Ibrahim and others

Criminal Appeal No.769 of 1991

(M.N. Venkatachaliah, A.M. Ahmadi, B.P. Jeevan Reddy JJ)

04.12.1991

### JUDGMENT

1. An order of detention No.F.No.673/167/91-CUS.VIII dated 9th April, 1991 authorising the detention of Haji Ahmed Ibrahim Merchant was passed under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. It was stated that on 4th April, 1991 the detenu said to be a resident of Bombay City, was intercepted at Panvel, Bombay and Gold Bars weighing 406641.90 grammes valued at Rs. 14,27,31,307.00 were seized and recovered from him.
2. The Nagpur Bench of the High Court of Bombay by its order dated 21st June, 1991 on Writ Petition No. 81 of 1991 brought by the detenu's father-in-law, who invoked the jurisdiction of the Nagpur Bench on the ground that he was a resident of Nagpur, quashed the detention. The Union of India and the detaining authority assail this order on several grounds including the one that the Nagpur Bench could not have entertained the writ petition.
3. We have heard Shri Altaf Ahmed, learned Additional Solicitor General for the Union of India and Shri R. K. Jain, learned senior counsel for the respondent-detenu. Special leave is granted.
4. Though several contentions against the legality and validity of the detention had been taken in the memorandum of writ petition, the one urged and accepted at the hearing was that the copies of certain documents served on the detenu and which, according to the detenu, formed the basis of the satisfaction of the detaining authority were wholly illegible and unreadable and there was, therefore, a denial of the constitutional safeguard of an opportunity to make an effective representation against the detention. That contention was noticed by the High Court thus:

"In this connection, our attention was drawn to the documents at pages 37, 38, 65, 69, 78, 99, 100, 118, 159, 163, 166 to 171, 225 backside of 237, 238 and the photographs at pages 17 and 208 to 210 and alleged that all these documents are illegible and cannot be read by anyone, much less the detenu."

It would appear that the detaining authority sought extension of time to file its reply to contest this averment as to the alleged illegibility of the documents. According to the appellants they desired to indicate that the documents served by them on the detenu were not illegible and did convey effectively the purport of their content and the purpose of which they were relied upon. The High Court was of the view that there was no justification for any such opportunity as, according to the High Court, "no useful purpose would be served by adjourning the petition for filing reply because the point raised is such that it does not call for any reply."

Accepting the detenus contention, the High Court held:

"We have carefully perused all these documents and there is no manner of doubt that the pages of the documents referred to above are wholly illegible and impossible to read. This fact cannot be disputed by the counsel appearing for the other side and factually it is not so disputed. In view of this position, it follows that both the facets of Article 22 (5) of the Constitution of India are violated. There is non-communication of the grounds of detention and consequently, detenus right to make the effective representation stands completely violated. On this ground alone. the impugned order of detention is liable to be quashed and set aside."

5. Having regard to the nature of the controversy raised in this appeal we, at an earlier stage, had directed the respondent detenu to produce before us the documents actually served on him. Pursuantly, those papers have been produced before us. We have perused the documents which, according to the High Court, were unreadable. Prima facie it appears to us that the sweeping attributes of illegibility are not shared by and qualified way the observations might be opposite in the case of a few. But the High Court did not examine the extent and nature of the illegibilities and evaluate their effect on the right of representation in the context of their importance in the formation of the satisfaction for the detention.

That apart, we think that having regard to the comparatively short period of the pendency of the writ petition, the High Court was not right in declining an opportunity to the appellants to file a reply. From what we gather from the submissions, appellants desired to satisfy the High Court that the documents shown to the Court might not have been the very documents supplied to the detenu but copies made therefrom, introducing an element of illegibility. The strong and general observations of the Court respecting all the documents, appellants contend, do not square with the factual position that many of them do not share the such infirmity and this might be due to the possibility of such substitution. Appellants say that they should have been afforded an opportunity to assist the Court in a more careful scrutiny whether all the documents shown to the High Court at the hearing were really those actually furnished by the detaining authority or were copies made therefrom. This aspect would also require to be examined by the High Court.

6. The order of the High Court is set aside and there will now be a remit of the matter for a fresh disposal in accordance with law. A point was taken by the appellants that Nagpur Bench did not have seisin of the matter merely on the plea that the place of residence of the father-in-law of the detenu, who moved the writ petition, was Nagpur. It is unnecessary to consider this as Shri R. K. Jain very fairly stated that it would be appropriate that the writ petition is sent to the Principal Bench of the High Court at Bombay. We do so accordingly. It is appropriate that the High court should dispose of the matter most expeditiously.

The respondent-detenu shall be entitled to urge before the High Court all defences that may be open to him at law including the one as to the effect of the want of the Advisory Board's opinion as required under Article 22(4) of the Constitution. Likewise, the detaining authority shall have all its contention open including the one as to the manner the period of time prescribed in Article 22(4) should be reckoned when an order of detention is interrupted by any judicial intervention.

7. The effect of setting aside the order of the High Court is that the order of detention revives and the detaining authority shall be entitled to enforce it. Appeal disposed of accordingly. Order accordingly.

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