

State of Tamil Nadu

Vs

Senthil Kumar

Criminal Appeal No. 120 of 1999

G. B. Pattanaik, S. S. Mohammed Quadri JJ)

03.02.1999

JUDGMENT

S. S. Mohammed Quadri J.

1. Leave is granted.
2. The State of Tamil Nadu is in appeal by special leave from the order of the Division Bench of the Madras High Court dated 29.1.98 in H.C.P. No. 768 of 1997 quashing the order of detention and setting the detenu at liberty.
3. The facts giving rise to this appeal may briefly be stated here.
4. On February 14, 1997 at 9.00 a.m., Jeyachandran Govindraj (the detenu) was bound for Sharjah via Muscat by Gulf Air. While he was proceeding to the aircraft at Chennai airport, foreign currency equivalent to Rs. 57,21,401/- was seized from his baggage. The State of Tamil Nadu, with a view to prevent him from indulging in smuggling activities in future, ordered his detention vide order No. SR-1/262-8/97 dated 16.6.97 passed under Section 2(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'COFEPOSA Act'). The said order was served on him on 23.6.97 and he was arrested on the same day.
5. The first respondent challenged the validity of the said order in the High Court of Madras in the petition filed under Article 226 of the Constitution of India. Various grounds were urged before the High Court to assail the said order of detention, but the High Court chose to quash the impugned order of detention on the sole ground of violation of the principles of natural justice.
6. It appears that before the High Court, the learned Government Pleader conceded that three documents in question were placed before the Advisory Board as well as the Government at the time of confirmation of the impugned order of detention. The High Court has pointed out that they are vital documents and that though they were sent to the detenu, there was no covering letter indicating as to who furnished them and the purpose for which they were given to him. It was observed that had the purpose of giving the documents been made known to him, he would have been in a position to make necessary arrangements but as he was kept in darkness, he was prevented from so doing, as such the authority violated the principles of natural justice and therefore, no specific prejudice need be shown by him to successfully challenge his detention. On January 29, 1998, the High Court allowed the petition, quashed the impugned order of detention and directed that the detenu be set at liberty forthwith unless he was required to be detained in any other case. It is the correctness of that order that is in issue before us.

7. Shri R. Mohan, the learned senior counsel for the State, submitted that the documents in question were not placed before the Advisory Board as it met on 8.7.97 and they were sent by the sponsoring authority to the Government on 14.7.97. From the order under appeal, it is seen that the following documents were furnished to the detenu : (i) Anticipatory bail application of co-accused, Abdul Hakim filed on June 27, 1997; (ii) Counter affidavit of the Customs department dated June 30, 1997 filed in the High Court in the CrI.O.A. filed by Abdul Hakim; (iii) Application filed by the detenu before the learned Chief Metropolitan Magistrate, Chennai, as further development documents. In view of the categorical statement made by the Government Pleader before the High Court which is recorded in the judgment under appeal, referred to above, and in view of the fact that those documents to above, and in view of the fact that those documents came into being in June 1997 before the meeting of the Advisory Board, we are not inclined to accept the submission of the learned counsel.

8. It is next contended by Shri Mohan that by giving additional documents to the detenu, even though not asked for him, none of his rights is violated.

9. The question that arises here is whether the course of action adopted by the State Government in sending the documents in question to the detenu has infringed any right of the petitioner ?

10. Two valuable safeguards for the detenu are incorporated in clause (5) of Article 22 of the Constitution of India. It reads thus :

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

The provision, extracted above, obliges the detaining authority to communicate to the person detained the grounds on which the order of detention has been made and to afford him the earliest opportunity of making a representation against the order. The principle of natural justice of affording an opportunity of being heard is thus embedded in clause (5) of Article 22 of the Constitution, albeit opportunity of being heard is afforded after making the order of detention but before confirming the same as the authority had the power to revoke, cancel or confirm the order. Therefore, there is no necessity to invoke the principle of natural justice, *de hors* Article 22(5) of the Constitution in this case as the grievance of the first respondent can be dealt with under that provision.

11. The principle laid down by the Constitution Bench of this Court in *State of Bombay v. Atma Ram, A.I.R. 1951 SC 157* is that while "additional grounds" cannot be given after the grounds are furnished in the first instance, but particulars of the facts mentioned or indicated in the grounds already conveyed stand on a different footing and that they are not new grounds within the meaning of Article 22(5). It was observed :

"Thus, while the first mentioned type of additional grounds cannot be given after the grounds are furnished in the first instance, the other types even if furnished after the grounds are furnished as soon as may be, but provided they are furnished *so as not to come in conflict with giving the earliest opportunity to the detained person to make a representation*, will not be considered an infringement of either of the rights

mentioned in Art. 22(5) of the Constitution."

Now advertent to the facts of this case, it is not in dispute that grounds of detention were served on the detenu within the specified time. The documents in question given to the detenu are not supplemental or additional grounds but additional material in support of the grounds already conveyed to the detenu.

12. Though, the documents furnished to the detenu in this case fall in the 'other types', as the State has acted in conflict with the safeguard of giving the earliest opportunity to the detenu to make an effective representation inasmuch as the documents were sent to him in a casual manner without a covering letter and without being told for that purpose they were sent to him and without mentioning that they would be placed before the Advisory Board as well as the Government in connection with the confirmation of the order of detention; consequently, he was deprived of his right to make an effective representation to the Government. Whereas punitive incarceration is after trial on the allegations made against a person, preventive detention is without trial into the allegations made against him. The Courts, therefore, adhere to strict compliance of the procedural safeguards in every case of preventive detention. A casual or random approach in complying with procedural safeguards more often results in infringement of the safeguard and vitiates the detention. In this view of the matter the fact that the wife of the detenu did file a representation is no answer to the complaint of the detenu that had he been informed that those documents were intended to be placed before the Advisory Board and that they would also be taken into consideration for purposes of passing the order of confirmation under Section 8(f) of the COFEPOSA Act, he would have made an effective representation. At any rate, he could not have complained that he did not have the opportunity to make an effective representation.

13. On the facts of the case, we are satisfied that the manner in which documents were served on the detenu did cause confusion to the detenu as he was kept in darkness about the purpose of furnishing the documents and far from giving him the earliest opportunity to make an effective representation, it deprived him of the chance of making representation which resulted in infringement of right guaranteed under Article 22(5) of the Constitution. The High Court was, therefore, right in quashing the impugned order of detention. We do not find any merit in the appeal and accordingly we dismiss the same.