

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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W.P. NOs. 38012 & 39519 of 2014

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Date of Judgment: 6.4.2015

Between:

R. Manohar & Guriginjakunta Ramesh Naidu

...Petitioners

And

The State of Andhra Pradesh and others

..Respondents

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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W.P. NOs. 38012 & 39519 of 2014

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COMMON ORDER:

Heard learned counsel for the respective petitioner as well as learned Advocate General appearing for the respondents.

Brother of detenu has filed WP No. 38012 of 2014 questioning the order of detention dated 13.10.2014 passed by the 2nd respondent as confirmed by the 1st respondent in G.O.Rt.No. 3849, General Administration (Law & Order) Department, dated 26.11.2014 under the A.P. Act 1/86 and the said detenu is ordered to be detained for a period of 12 months from the date of detention.

Elder brother of detenu has filed WP No. 39519 of 2015 questioning the order of detention dated 13.10.2014 passed by the 2nd respondent as confirmed by the 1st respondent in G.O.Rt.,No. 3845, General Administration (Law & Order) Department, dated 26.11.2014 under the A.P. Act 1/86 and the said detenu is ordered to be detained for a period of 12 months from the date of detention.

Though the learned counsel for the respective petitioner in both the writ petitions questions the detention order on various grounds, they confined their submissions to only contention that the order of detention is to be quashed as the detaining authority directs detention of detenu for a period of 12 months subject to confirmation by the State Government. They contend that under the A.P. Act 1/86 the detaining authority has no power to fix specific period of detention as that power is exclusively vested with the Government and for that they placed reliance upon decisions of the Supreme Court reported in *Makhan Singh Tarsikka Vs. State of Punjab* and *Hadibandhu Das Vs. District Magistrate, Cuttack* . Both the said decisions squarely apply to the facts of the present cases. In *Makhan Singh Tarsikka Vs. State of Punjab* (1st supra) the detention order was quashed in view of fixing period of detention in the initial order of detention and it was not approved and the order of detention was quashed. In *Hadibandhu Das Vs. District Magistrate, Cuttack* (2nd supra) it was also held in para-12,

“Negligence or inaptitude of the detaining authority in making a defective Order or in failing to comply with the mandatory provisions of the Act may in some cases enure for the benefit of the detention to which he is not entitled. But it must be remembered that the Act confers power to make a serious invasion upon the liberty of the citizen by the subjective determination of facts by an executive authority, and the Parliament has provided several safeguards against misuse of the power. The very fact that a defective order has been passed, or that an order has become invalid be cause of default in strictly complying with the mandatory provisions of the law bespeaks negligence on the part of the detaining authority, and the principle underlying Section 13 (2) is, in

our view the outcome of insistence by the Parliament that the detaining authority shall fully apply its mind to and comply with the requirements of the statute and of insistence upon refusal to countenance slipshod exercise of power.”

I had also an occasion to consider the similar contention and quashed the order of detention in W.P.Nos. 28696 of 2014 and batch, dated 21.10.2014.

Learned Advocate General appearing for the respondents submitted that in these cases not only the order of detention was passed, but after noticing a defect, an errata was also published on 20.10.2014 in both cases whereby for the words “12 months from the date of detention’ occurring in the order of detention, the words “until further orders” were replaced.

Based on that, it is contended by the learned Advocate General that the defect if any stands cured and it is undoubtedly for the Government to decide the period for which the detention order to be passed. The learned Advocate General also placed reliance upon the judgments of the Supreme Court reported in *State of Bombay Vs. Purushottam Jog Naik* , *Sudhir Chandra Singh Vs. The Dist. Magistrate, Malda* and *Kirti Kumar Nirula Vs. State of Maharashtra* and based on the ratio of the said decisions, it is contended that it is essential to appreciate the substance of the expression in the order of detention rather than the form.

Though I have considered the aforesaid contentions of the learned Advocate General, I find it difficult to accept. It is by virtue of the decision of the Supreme Court in *Makhan Singh Tarsikka Vs. State of Punjab* (1st supra), it is settled that the detaining authority cannot specify the period of detention and by that ratio, the order of detention cannot be sustained. In my view, by the errata, instead of removing the defect in the order of detention it makes still worse as it deleted the period of 12 months prescribed and prolonged the period

of detention until further orders. As noticed above, under the A.P. Act 1/86 the period of detention is entirely left for the Government to decide and not for the detaining authority to prescribe. Hence irrespective of the errata issued, the order of detention cannot be sustained. It is made clear that rest of the grounds raised against the order of detention are neither canvassed nor adjudicated. Hence rest of the grounds are kept open.

For the reasons given hereinabove, both these writ petitions are allowed, the orders of detention are quashed and the detenus in both cases shall be released from custody forthwith, if not required in any other cases.

Miscellaneous applications, if any, shall stand closed. No order as to costs.

VILAS V. AFZULPURKAR, J

Dt. 6.4.2015

NB:

Order be communicated to the concerned authorities today itself

/BO/

KR

