

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No.34075 of 2015

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The wife of the detainee sought for a writ of Habeas Corpus by pointing out the infirmities noticed in the order of detention as well as those found in the grounds of detention.

The Commissioner of Police, Hyderabad City passed an order on 12.05.2015 preventively detaining the detainee, on the ground that he is a bootlegger, exercising the power available to him under sub-section 2 of Section 3 of Telangana Prevention of dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act (for short henceforth 'the Act'). The Commissioner of Police has also drawn the grounds of detention on 15.05.2015. The detainee is alleged to have been involved in various crimes, which have been reported against him between 07.11.2013 and 20.03.2015, on six different occasions and hence, those six crimes have formed the basis for ordering the preventive detention of the detainee. In all those cases, the detaining authority suspected that the detainee was indulging in manufacture and pedalling illicitly distilled liquor, which is unfit for consumption of human-beings apart from being injurious to their health. Thus, he arrived at his subjective satisfaction and ordered for the detention of the detainee.

It is not in dispute that the State Government has approved this order initially within the 12-day limit prescribed under sub-Section 3 of Section 3 of the Act and subsequently, placed the entire material for consideration of the Advisory Board and based upon the advice tendered by the Advisory Board on 23.06.2015, passed orders through their G.O.Rt.No.2170, General Administration Department, dated 02.08.2015 firming up the period of detention as 12 months from the date of detention

namely 15.05.2015.

Heard Sri L. Ravi Chander, learned Senior Counsel on behalf of Sri Satish Kumar Varma, learned counsel for the petitioner and Sri H.Venu Gopal, learned Government Pleader for Home (Telangana).

Though several contentions have been canvassed, but however, the learned Senior Counsel Sri Ravi Chander would concentrate on two areas; To begin with, he mounted a criticism on the detaining authority using an 'alias name' for the detainee, which is obnoxiously derogatory and making a repeated reference to the said alias name reflected lack of sensitivity of the detaining authority to the human values. More importantly, Sri Ravi Chander would concentrate on the plea that the detainee does not know either Telugu or English languages and he only knows Hindi language and hence, the translated copies of the detention order and the grounds of detention have been furnished to him in Hindi language, but however, the material, which formed the basis for the grounds of detention, has not been got translated into Hindi and has not been made available to him. It is the contention of the learned Senior Counsel that by virtue of this handicap of not clearly knowing as to what material really weighed with the detaining authority, the detainee has been denied his right to make an effective representation in terms of Article 22(5) of the Constitution of India. The learned Senior Counsel has also placed strong reliance upon the judgment rendered by us as recently as on 12.01.2016, in support of his plea that failure to supply translated copies of the core material, which formed an integral part of the grounds of detention, is fatal and further continuation in detention of the detainee becomes illegal.

Sri Venu Gopal, learned Government Pleader for Home would attempt at neutralizing the above contention by pointing out that the detaining authority is conscious that the detainee knew Hindi language well. Therefore, the translated version of the detention order and the grounds of detention in Hindi language were also additionally supplied

apart from serving the original detention order and grounds of detention drawn in English language. But, however, the learned Government Pleader would point out that the detainee has affixed his thumb impression on the record that is made available to him, thus, implying that he is not a literate individual. Therefore, the detaining authority has taken care to ensure that the detainee has been orally explained the contents of the material which has been relied upon by the detaining authority. Therefore, there is no way that the detainee has suffered any prejudice or even disadvantage in making an effective representation. In fact, the detainee has not made any such representation, but he preferred to make his oral submissions before the Advisory Board, which it has considered.

While dealing with a somewhat similar contention which has fallen for consideration in W.P.No.34054 of 2015, in our judgment rendered on 12.01.2016, we have dealt with the fatal aspect of the matter where failure to supply translated copies of the material which formed part of the order of detention, relying upon the principle enunciated by the Supreme Court in **Lallubhai Jogibhai Patel Vs. Union of India and Others**^[1] and **Powanammal Vs. State of Tamilnadu**^[2] and held that non supply of the translated copies of the material relied upon amounts to denying the right to make effectively a representation against such detention to the Advisory Board as well as to the State Government.

It is apt to notice that the Supreme Court in Lallubhai Patel's case (1 Supra) has considered the scope of the expression "communicate" as was found in Article 22(5) of our constitution, and held that it is a strong word and that it means that sufficient knowledge of the basic facts constituting the 'grounds' should be imparted effectively and fully to the detainee in writing in a language which he understands.

However, in the instant case, the order and the grounds of detention are got translated in Hindi language and they are served on the detainee, apart from their originals in English language. Being an

illiterate person, the detainee affixed his thumb impression thereon. The contents of the same are also explained to the detainee by the Inspector of Police, Shahinayatgunj Police Station and having understood the same he affixed his thumb impression. But yet, he did not submit any representation for consideration of the Advisory Board or the State Government. Obviously he could not do so as he is stated to be an illiterate person. Coupled with this, the bar contained in sub section 5 of Section 11 of the Act for any legal practitioner to appear before the Advisory Board on behalf of the detainee, makes the present situation slightly different from the earlier case which we decided. When the order of detention and grounds of detention are got translated into Hindi language, known and understood by the detainee, and served on him and their contents are also explained to him clearly, it did not result in his making a representation to the State Government or the Advisory Board. Hence, we feel, that the failure to supply the translated copies of the material relied upon by the detaining authority cannot be said to have impacted in any manner the right of the detainee to make an effective representation against his preventive detention or rendered any such right ineffective. Hence, we are unable to hold that the right guaranteed to the detainee under Article 22(5) of our Constitution is impaired.

However, when we noticed that the detaining authority has relied upon the suspected involvement of the detainee in 6 different excise offences that took place between 07.11.2013 and 20.03.2015 - spread over a period of 16 months - for formation of his satisfaction that these cases are proving ineffective in preventing the detainee to desist from the alleged dangerous activities and thus requiring his preventive detention, we realise that in all these cases the detainee was shown to have been arrested only on 20.03.2015 and was enlarged on bail on 24.03.2015 by the Criminal Court. No explanation was offered as to the reasons for not apprehending the detainee for more than one year, in spite of his alleged involvement in several cases. The detention order was passed on 12.05.2015 i.e., less than 2 months after his arrest and release on bail. In

no case the investigation was completed and charge sheet is filed. Further, excepting the last event that occurred on 20.03.2015, in all other cases the involvement of the detainee was suspected based upon the statements said to have been made by the person apprehended while being in possession of the contraband. Therefore, we feel that the sponsoring authority has not acted diligently either in bringing out effectively the active involvement of the detainee in those 5 crimes reported prior to 20.03.2015 or in prosecuting those criminal cases properly, for the detaining authority to arrive at the opinion, fairly and reasonably, that the ordinary criminal law is not able to effectively deal with or prevent the detainee from indulging repeatedly in dangerous activities.

In this context, it is apt to notice that a three Judge Bench of the Hon'ble Supreme Court in ***Rekha vs. State of Tamil Nadu***^[3] after having traversed the legal principles on the subject has set out in paragraph Nos.19, 20, 21, 23 and 29 as under:

“19. In the Constitution Bench decision of this Court in M. Nagaraj & Ors. Vs. Union of India & Ors. (2006) 8 SCC 212, (para 20) this Court observed:

“20..... It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race.”

In the 9 Judge Constitution Bench decision of this Court in I.R. Coelho (dead) By LRs. Vs. State of T.N., (2007) 2 SCC 1 (vide paragraphs 109 and 49), this Court observed:

“109..... It is necessary to always bear in mind that fundamental rights have been considered to be the heart and soul of the Constitution.”

“49.... Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as “transcendental”, “inalienable”, and primordial”.

20. In our opinion, Article 22(3)(b) cannot be read in isolation, but must be read along with Articles 19 and 21, vide Constitution Bench decision of this Court in A.K. Roy Vs. Union of India (1982) 1 SCC 271 (para 70).

21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one

year's imprisonment. What difference is it to the detenue whether his imprisonment is called preventive or punitive?

23. In this connection, criminal cases are already going on against the detenue under various provisions of the Indian Penal Code, 1860 as well as under the Drugs and Cosmetics Act, 1940 and if he is found guilty, he will be convicted and given appropriate sentence. In our opinion, the ordinary law of the land was sufficient to deal with this situation, and hence, recourse to the preventive detention law was illegal.

29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.”

Therefore, we allow this writ petition holding that the further continuance of detention of the detenue is illegal. Hence, we set-forth at liberty the detenue, if his detention is not called for any further in connection with any other cases.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

17.02.2016
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[\[1\]](#) 1981 (2) SCC 427

[\[2\]](#) 1999 (2) SCC 413

[\[3\]](#) (2011) 5 SCC 244