

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No.30001 OF 2016

ORDER: *(Per the Hon'ble SKK,J)*

Vide the present petition, the petitioner seeks directions thereby quashing the proceedings dated 12.07.2016 vide Roc No.C2/13024/68/2016, passed by the respondent No.2, which was confirmed by the respondent No.1, vide G.O.Rt.No.2008, General Administration (Law and Order) Department, dated 22.09.2016, as illegal and an un-constitutional.

2. Learned counsel for the petitioner argued that the aforesaid detention order dated 12.07.2016 was served on the petitioner's husband (hereinafter shall be referred as "detenu") on 12.07.2016. Since then he is in jail. It is further submitted that the detention order dated 12.07.2016 and grounds based upon, were served in the Malayalam language, as the detenu is from the State of Kerala. He can read, write and understand Malayalam. The detention order dated 12.7.2016 and grounds based on the order passed were served in the language of Malayalam, known language of the detenu. However, rest of the documents have been supplied either in English or in Telugu, which are not known languages of the detenu.

3. On the other hand learned counsel for the respondents has fairly conceded that the relied upon documents have been served in English or Telugu, but not been served in the language of Malayalam. However, the detenu was explained each and every document and made him understood. Learned counsel submits, if

the respondents explained the documents orally to the detenu, then there is no mandatory requirement to supply the document in the language known to the detenu.

4. To strengthen his argument on the above issue, he relied upon a case of **Jayanta Jadav V. The State of West Bengal**¹, whereby in para-4, the contention of the petitioner therein recorded that the petitioner is illiterate and since the order of detention was not explained to him orally in his own language he had no opportunity to make an effective representation. It is further recorded in the said para that the affidavit of the Deputy Secretary shows that the vernacular translation of the detention order was supplied to the petitioner on the very day that the order of detention was served on him. Besides the petitioner had made his representation to the Government and had also appeared in person before the Advisory Board. It cannot therefore be said that petitioner was not aware of the nature of the allegations made against him.

5. The case relied upon by the learned counsel for the respondent is not relevant in the present circumstances for the reason that the detenu herein is not an illiterate. He can read, write and understand Malayalam language. The afore-cited judgment is applicable only where the detenu is illiterate, he does not know any of the language. In that case, the respondents are duty bound to explain and make him understand each and every paper in the language, which he understands. The situation in the case in hand is totally different.

¹ (1974) 4 Supreme Court Cases 503,

6. Time and again, the Supreme Court and different High Courts have reminded detaining authorities that the documents relied upon have to be supplied in vernacular language or the language known to the petitioner.

7. The present case is not the first case. We failed to understand why such silly mistake has been committed by the respondent No.3 in the present case. Moreover, the stand taken by the learned counsel for the respondents is totally contrary to the settled law and the provisions of the Act.

8. In case of **Powanmmal V. State of T.N. and another**², whereby, the Supreme court held that the amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.

9. It cannot be disputed that such type of issues have been coming before the Courts from 1960's and various High Courts and Supreme Court have passed the orders and gave directions again and again, despite, respondent authorities are committing such type of silly mistakes, which is not acceptable.

10. In addition to above, this Court vide order dated 06.09.2016 passed in W.P No.23972 of 2016, quashed the

² (1999) 2 Supreme Court Cases 413

detention order therein, issued by the District Collector, Chittoor, and held that this is necessary to protect and safeguard the constitutional right of the detenu to make a representation effectively against his detention. Once translated copies of all the relevant material is provided to the detenu, it would be open to him to take the assistance of others, including his family and friends, to formulate an effective representation to the authorities against his detention. Therefore, it is the constitutional duty of the State to make the document available in any language known and understood by the detenu, failing which, it would violate his constitutional right.

11. Coming to the present case, the detention order dated 12.7.2016 is passed by the respondent No.2-Collector and District Magistrate of Chittoor District, on the documents placed by respondent No.3-the Superintendent of Police of the same District. Thereafter, it was the duty of respondent No.3 to ensure that the detention order; grounds relied upon are served upon the detenu. The said respondent is duty bound to provide under Section 8 of the Act relied upon documents in the known language of the detenu, within five (05) days from the date of detention. It cannot be believed that the said respondent was not aware about the procedure. It is not the first case in this State that they never had experience of the same. Thus, it seems that the respondent No.3 was determined to detain the detenu under any circumstances, thus he succeeded into get the detention order passed. However, thereafter, he never bothered whether the documents relied upon have been served to the detenu within the statutory period in the language known to detenu. Due to carelessness of the respondent

No.3, the detenu could not make effective representation, which is his right provided under the law. Thus, his liberty was curtailed, for 7 months, as provided by the Constitution of India.

12. Therefore, we hereby quash the detention order dated 12.7.2016 vide Roc No.C2/13024/68/2016 passed by the respondent No.2 which was confirmed by the respondent No.1 vide G.O.Rt No.1551, General Administration (Law and Order) Department dt 20.07.2016.

13. Accordingly, this writ petition is allowed with costs of Rs.25,000/- (Rupees twenty five thousand only) each to be paid by respondents No.3 and 4 within ten (10) days from today. Out of the total amount of Rs.50,000/-, Rs.30,000/-(Rupees thirty thousand only) shall be paid in favour of the petitioner and Rs.20,000/- (Rupees twenty thousand only) shall be paid in favour of High Court Legal Services Committee, Hyderabad.

14. We hereby make it clear that Rs.5,000/- (Rupees five thousand only) each shall be recovered from the salary of respondents No.3 and 4.

15. It is important to note, while checking the draft of the order, we have realized that the respondent No.4 has no role in supplying the documents to the detenu. However, respondent No.3 is responsible for the same. However, while quashing the detention order dated 12.7.2016, we have imposed costs upon respondents No.3-Superintendent of Police, Chittoor District and respondent No.4-Superintendent, Central Prison, YSR Kadapa

District. An advance order has already been issued, so that, the detenu shall be released forthwith.

16. The respondent No.3 is Superintendent of Police, who placed the material for passing the detention order before respondent No.2. Accordingly, respondent No.2, passed the detention order. Thereafter, service of the detention order upon the detenu with grounds of detention and relied upon documents in the known language is the duty of the respondent No.3.

17. Therefore, we hereby modify the above order and costs earlier imposed upon respondent No.4, are hereby withdrawn.

18. We hereby make it clear that only respondent No.3 shall pay an amount of Rs.25,000/- towards costs, out of which, Rs.5,000/- shall be recovered from his salary. Out of the total amount of Rs.25,000/-, Rs.10,000/- shall be paid in favour of High Court Legal Services Committee, Hyderabad and Rs.15,000/- shall be paid in favour of the petitioner.

Miscellaneous Petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

JUSTICE U.DURGA PRASAD RAO

Date :15-02-2017

Note : L.R. Copy to be marked.

B/o

Gvl

