

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

WRIT PETITION No.45850 of 2016

Between:

Shahan, W/o Shaik Fayaz Sharrif

... Petitioner

And

State of A.P. repled by its Chief Secretary,

Velagapudi and three others.

... Respondents

JUDGMENT PRONOUNCED ON 28.6.2017

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE MS JUSTICE J.UMA DEVI

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE J.UMA DEVI

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE MS JUSTICE J.UMA DEVI

WRIT PETITION No.45850 of 2016

% 28.6.2017

Between:

Shahan, W/o Shaik Fayaz Sharrif

..... Petitioner

And.

\$ State of A.P. reptd by its Chief Secretary,
Velagapudi and three others.

.....Respondents

< Gist:

> Head Note:

! Counsel for the petitioner: Mr. D.Purna Chandra Reddy

^ Counsel for the respondents: Mr. C.S.Surya Prakash Rao

Special Government Pleader (AP)

? Cases Referred:

1. (1982)1 SCC 271
2. 2015 SCC Online SC 1356

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE MS JUSTICE J.UMA DEVI

WRIT PETITION No.45850 of 2016

Date:28.6.2017

Between:

Shahan, W/o Shaik Fayaz Sharrif

..... Petitioner

And:

State of A.P. repled by its Chief Secretary,
Velagapudi and three others.

.....Respondents

Counsel for the petitioner: Mr. D.Purna Chandra Reddy

Counsel for the respondents: Mr. C.S.Surya Prakash Rao

Special Government Pleader (AP)

The Court made the following: toddler

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

The preventive detention of the husband of the petitioner, allegedly a hardcore red sander smuggler, is assailed in this Writ Petition.

Shorn of all unnecessary details, it will suffice to refer to the three contentions raised by the learned counsel for the detenu, viz, (1) the detenu having studied up to IVth standard in Urdu medium, the respondents have not supplied the order of detention and the material in support thereof in the only language known to him, namely, Urdu; (2) that the impugned order of detention suffers from non-application of mind, in that a grossly incorrect statement has been made by respondent No.2 that in spite of registration of crimes and arrest, it is evident that the detenu is habituated in committing similar offences. As a matter of fact, the detenu was arrested on 12.10.2015 and he was never physically released thereafter before the impugned detention order was passed on 13.10.2016; and (3) that though the officers of the respondents have appeared before the Advisory Board, the detenu was denied the facility of engaging a legal practitioner before the Advisory Board and that therefore, the denial of the benefit of engaging a legal practitioner is contrary to the Constitution Bench judgment of the Supreme

Court in *A.K.Roy Vs. Union of India*¹, which was followed in *Choith Nanikram Harchandani Vs. State of Maharashtra & Ors*².

The learned Special Government Pleader representing the learned Advocate General for the State of Andhra Pradesh, appearing for the respondents, submitted that since the detenu was born and brought up in the State of Karnataka, he understands Kannada language and that the detention order and the relevant material was read over to him in Kannada. He has invited this Court's attention to para-21 of the counter-affidavit of respondent No.2.

As regards the purported error in the order of detention to the effect that in spite of registration of cases and his arrest, the detenu has been repeating the offences, the learned Special Government Pleader submitted that the said paragraph is to be read along with the preceding paragraph and that if so read, it is clear that respondent No.2 never intended to mean that the detenu has repeated the offences after his arrest on 12.10.2015.

We have carefully considered the submissions of the learned counsel for the parties.

As regards the first submission of the learned counsel for the detenu, in paragraph-21 of the counter-affidavit, it is stated as under:

¹ (1982) 1 SCC 271

² 2015 SCC Online SC 1356

“The detenu was born and brought up in Karnataka State. He speaks and understands Kannada language. As such the contents of the documents were read over and explained to him in Kannada language and he has also endorsed to the said effect on each page. The detenu having committed the offences and obtained bails is well aware of all the facts and circumstances of each and every case and also having appeared before the Advisory Board and represented his case, cannot contend that non-supply of documents in Urdu language precluded him from making an effective representation against the detention order.”

No rejoinder affidavit is filed on behalf of the detenu controverting the above specific assertions made in the counter-affidavit.

It is common knowledge that people belonging to other religions whose mother tongue is different from that of the people living in a particular State acquire knowledge in that language because of their birth and also brought up in that State. As the averment in the counter-affidavit that the detenu speaks and understands Kannada language has not been specifically controverted by way of a rejoinder, it gives rise to the presumption that the detenu was familiar with Kannada language. The object behind the requirement of supply of the detention order and the material relied upon in such order to the detenu in the language known to him is to facilitate him to make an effective representation. If the contents of the detention

order and the material in support thereof are properly explained in the language known to the detenu, no prejudice can be said to have been caused to him in not supplying the detention order and documents in Urdu language.

In view of the failure of the petitioner in filing rejoinder specifically contradicting the above-noted contents in para-21 of the counter-affidavit, we are unable to accept the submission of the learned counsel for the detenu that by not supplying the detention order and the material in support thereof in Urdu language to the detenu, prejudice was caused to him.

Coming to the second submission of the learned counsel for the detenu, it is not in dispute that the detenu was arrested on 12.10.2015 in connection with Crime No.80 of 2015 and he was not physically released by the time of passing of the impugned order of detention. A perusal of the impugned detention order shows that respondent No.2 has taken note of the fact that the detenu was a dreaded and notorious red sander wood thief and smuggler, involved in as many as 23 different cases and the registration of cases against him did not show any deterrent effect on him as he continued to indulge in similar activities.

Having made these observations in paras-1 and 2, in para-3 of the impugned order, respondent No.2 has further observed as under:

“Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him.

It is further reported that in spite of registration of crimes and arrest, it is evident that the said Shaik Fayaz Shariff @ Shareef @ Faiyo @ Faiyu @ Fayyu, S/o Anwar Shariff, aged 40 years, Occ: Red Sander smuggling, Katigenahalli Village, Jadegenahalli Hobli, Hoskote Taluq, Bangalore Rural District, Karnataka State is habitually committing similar offences.”

No doubt, on superficial reading of the above extracted para, it would convey the meaning that respondent No.2 was under the impression that his arrest did not have any deterrent effect on the detenu. However, on a holistic reading and understanding of the counter-affidavit, we are of the opinion that addition of the words “and arrest” in the above-reproduced paragraph appears to be inadvertent and by use of these words, it cannot be said that respondent No.2 was under a wrong impression that after the detenu’s release, he has repeated the similar activities. What respondent No.2 evidently intended to convey was that registration of as many as 23 different red sander cases did not have any deterrent effect on the detenu and

there is a likelihood of his committing similar offences if he is released. The detenu who has been allegedly indulging in the offences of red sander smuggling cannot be allowed to take undue advantage of a small slip in the language employed by the detaining authority by terming the detention order as being a result of non-application of mind.

As regards the third submission of the learned counsel for the petitioner, at the hearing, it is not disputed that the request of the detenu for permitting him to engage a legal practitioner before the Advisory Board was denied. In the counter-affidavit of respondent No.2, it is specifically stated that the Advisory Board has reviewed the detenu's case on 23.11.2016 and has rejected his prayer to engage an advocate before it. This rejection was not challenged by the detenu by instituting a separate proceeding.

Be that as it may, under Section-11(5) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders and Land Grabbers Act, 1986, the detenu is not entitled to engage any legal practitioner in any matter connected with reference to the Advisory Board.

In **A.K.Roy** (1 supra), a Constitution Bench of the Supreme Court held that if the detaining authority or the Government takes the aid of a legal practitioner or legal advisor before the

Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. If such opportunity is denied to him, then a clear case of breach of Article-14 is made out in favour of the detenu.

In *Choith Nanikram Harchandani* (2 supra), the Supreme Court has observed that in *A.K.Roy* (1 supra) the expression “legal practitioner” was interpreted to include even the officers of the Government when they appear before the Board to assist the proceedings against the detenu, the detenu too has to be provided with equal facility of appearing before the Board through legal practitioner.

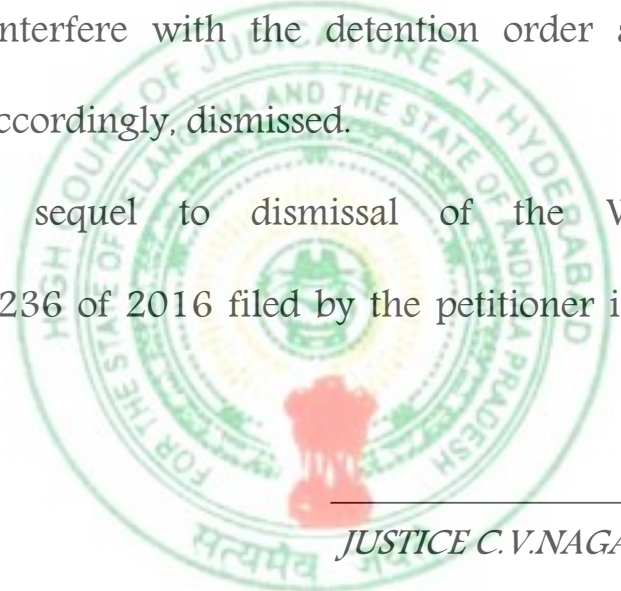
In para-33 of the counter-affidavit, respondent No.2 stated as under:

“As per Sub-section-(5) of Section-11, it is clear that the detenu has to appear before the Advisory Board and make his submissions and he is not entitled to be represented by any legal practitioner. The officials attended before the Advisory Board in order to assist the Hon’ble Members while handing over its records and other materials during review, but not to justify the order of detention or otherwise. Moreover, the Advisory Board consists of Retired High Court Judges who are well aware of the procedure of Article-14 of the Constitution of India would not be violated. Therefore, the contention that not allowing the detenu to get represented through an Advocate at the time of hearing before the Advisory Board is not correct and untenable.”

In view of the clarification given by respondent No.2 in the counter-affidavit that the officials have merely appeared before the Advisory Board during review in order to assist the Hon'ble members while handing over the records and other materials but not to justify the order of detention, we do not find any merit in this submission of the learned counsel for the petitioner.

For the above-mentioned reasons, we do not find any reason to interfere with the detention order and the Writ Petition is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition, WPMP.No.5236 of 2016 filed by the petitioner is dismissed as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE J.UMA DEVI

28th June 2017

Note:

LR copies to be marked.

B/o

DR