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Manak Chand Sohanlal Jain Vs State of Madhya Pradesh and another

M.P. No. 115 of 1980

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Sept. 17, 1980

Acts Referred:
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 â€" Section 3(1), 3(2)(a)

Citation: (1981) JLJ 194 : (1980) MPLJ 547

Hon'ble Judges: R.C. Shrivastava, J; K.K. Dube, J; H.G. Mishra, J

Bench: Full Bench

Advocate: J.P. Gupta, for the Appellant; M.A. Shah, Deputy Govt. Advocate for State, for the Respondent

Final Decision: Allowed

Judgement

This petition under Article 226 of the Constitution for issue of a writ in the nature of habeas corpus has been referred to me on difference of

opinion between my learned brothers Dube, J. and Mishra, J. who constituted the Division Bench by which the petition was heard. Dube, J. is of

the view that the petition is liable to be dismissed; whereas, Mishra J. holds the contrary opinion that it must be allowed.

The petitioner is under detention by virtue of an order dated 17-3-1980 passed by the District Magistrate, Guna, u/s 3(1) read with section 3(2)(a)

of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, which will hereinafter be referred to as

the Act. The order was confirmed by the State Government on 6-5-1980 u/s 12(1) of the Act. The period of detention will expire on 20-9-1980.

The order dated 17-3-1980 passed by the District Magistrate u/s 3(1) of the Act reads as follows:

Whereas it has come to my notice that the activities of Manakchand son of Sohanlal Jain, resident of Mungaoli acting in a manner prejudicial to the

maintenance of supplies of commodities essential ""to the community, I am satisfied that it is necessary to detain him. Now, therefore, in exercise of

the powers conferred on me u/s 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

I, S.R. Mishra, District Magistrate, Guna hereby order that Manakchand son of Sohanlal Jain resident of Mungaoli, Police Station and Tehsil

Mungaoli, district Guna be taken into custody and without loss of time be sent for a period of six months to the Superintendent, Central Jail,

Gwalior in accordance with the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980.

Statement of grounds on which the order was made was furnished to the petitioner on 21-3-1980 u/s 8(1) of the Act. It reads as follows:

(underlined by me)

The first point on which Dube J. and Mishra J. have differed is whether the underlined portion in the statement of the grounds of detention

invalidates the detention order. Dube, J. is of the opinion that it is of little significance as it is not a part of the detention order. According to Mishra

J. it is an essential part of the grounds supplied and, as the satisfaction recorded therein is foreign to the scope of section 3 (1) of the Act, the

detention order is rendered illegal.

The said portion of the statement of the grounds of detention can be translated into English as follows:

I am satisfied that you are proving to be such an hindrance to public security and peace and in public interest that it has become necessary to detain

you u/s 3(1) of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

The detention order contemplated by section 3(1) of the Act can be made against any person only on being satisfied that it is necessary to detain

him with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. In

the detention order, the District Magistrate did not say that he was satisfied that it was necessary to detain the petitioner "with a view to prevent

him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community". The expression "acting in any

manner prejudicial to the maintenance of supplies of commodities essential to the community" has been explained in the Explanation to section

3(1). Accordingly, it means--

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955, (10 of 1955) or under any

other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity

essential to the community; or

(b) dealing in any commodity--

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955) or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a), with a view to making gain in any manner

which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

Satisfaction on no other point can be made basis of the detention order.

Under sub-sections (3) and (4) of section 3, which are mandatory, it is incumbent upon the detaining authority to forthwith report the fact together

with grounds of detention to the State Government or the Central Government as the case may be. Section 8, which is also mandatory, lays down

as follows:

Grounds of orders of detention to be disclosed to person affected by the order--(1) When a person is detained in pursuance of a detention order,

the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to

be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and

shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

Sub-section (1) of the section makes it obligatory on the authority concerned to communicate to the detenu, within the prescribed period, the

grounds on which the detention order has been made and to afford him the earliest opportunity of making a representation against the order. Under

sub-section (2) the authority is, of course, not bound to disclose facts which it considers to be against the public interest to disclose. Sub-section

(2) has no application in the present case. The detention order made u/s 3 (1) is necessarily to be followed by the act of communicating the

grounds of detention forthwith to the State Government or the Central Government as the case may be u/s 3 (3) or section 3 (4) and by the act of

a communicating the grounds of detention to the detenu u/s 8 (1). So, it becomes clear that the Act does not permit any person to be detained

without grounds, though it permits the grounds to be communicated to the detenu afterwards within the period prescribed by section 8 (1). Sub-

section (2) of section 8 permits non-disclosure of only those facts which the authority considers to be against the public interest to disclose. As the

detention order cannot stand without grounds of detention, it must be held that the statement of the grounds of detention constitutes an essential

part of the detention order and that it must be in consonance with the detention order. If it discloses material disparity with the detention order the

disparity would have the effect of rendering the detention order invalid. If, in the statement of the grounds of detention furnished to the detenu,

something foreign to the scope of section 3 (1) is stated to be the ground of satisfaction, that hits the detention order at the root and the detention

order collapses.

It may be mentioned that it is not open to read in the order or in the statement of the grounds of detention anything which is conspicuously absent

therefrom nor can the error, occurring therein, be subsequently explained. The following observations made by their Lordships of the Supreme

Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, are helpful in that connection.

We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently

given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public

authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be

construed objectively with reference to the language used in the order itself.

Preventive detention is a serious invasion of personal liberty. The detention of a person without trial is a serious matter and requires the greatest

circumspection on the part of those who wield the power. There is no room for errors or at least avoidable errors.

In the case of G.M. Shah Vs. State of Jammu and Kashmir, 494 referred to by the learned counsel for the petitioner as well as by Mishra J. one

Shabir Ahmed Shah was datained u/s 8 (2) of the Jammu and Kashmir Public Safety Act 1978. The detention order stated--that the District

Magistrate was satisfied that it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to the maintenance

of public order. In the grounds of detention furnished to him u/s 13 of that Act, it was stated that "your remaining at large is prejudicial to the

maintenance of public order and also to the security of the State". While the order of detention stated that it was being made with a view to

preventing him from acting in any manner prejudicial to the maintenance of public order, in the grounds of detention, it was stated that his remaining

at large was prejudicial to the maintenance of public order and also to the security of the State. As the statement of the grounds of detention was,

thus, not in conformity with the detention order, it was held that the detention order could not be supported even on the ground that it had been

passed with a view to preventing the detenu from acting against public order. Their Lordships concluded that the order of detention was liable to

be quashed and that the detenu was entitled to be set at liberty.

Satisfaction on the point that the detenu is proving to be an hindrance to "public security" and in "public interest" cannot be made basis for the

order of detention u/s 3 (1) of the Act. That is wholly irrelevant for the purpose of that section. The portion of the statement of the grounds of

detention underlined in paragraph No. 3 above is also inconsistent with the detention order and the inconsistency given a complete go-bye to the

suggestion that the detention order was made with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of

supplies of essential commodities. I concur with the view of Mishra J. that the above-quoted recital in the statement of the grounds of detention

renders the detention order illegal.

It may be mentioned that decisions in Kuso Sah Vs. The State of Bihar and Others, and Mohd. Yousuf Rather Vs. State of Jammu and Kashmir

and Others, to which also reference has been made by the learned counsel for the petitioner and Mishra J. are, in my opinion, not of any help in

resolving the point of difference under consideration. In the case of Kuso Sah (supra) detention was ordered with a view to preventing the detenu

from "acting in any manner prejudicial to the maintenance of public order and the maintenance of supplies and services essential to the community."

The grounds of detention were divided into two parts. The first part referred to acts prejudicial to the maintenance of public order; while, the

second part referred to those prejudicial to the maintenance of supplies and services essential to the community. Two of the three grounds in the

first part had no rational relation with "public order". It was held that, in view of the language of the detention order, "maintenance of public order"

and "maintenance of supplies and services essential to the community" could not be bifurcated and considered in separate compartments and that,

since two of the three grounds in the first part of the grounds of detention were irrelevant, entire detention order was illegal. In the case of Mohd.

Yousuf (supra), the statement of grounds of detention comprised of 7 paragraphs. The grounds were mentioned in the first 6 paragraphs. The last

paragraph was in the following terms.

Your activities are highly prejudicial to the maintenance of public order and I am convinced that unless you are detained, large scale disturbances

resulting in widespread loss to the public and private property and to the safety of peaceful citizens will occur.

Their Lordships negatived the contentions that the first paragraph was of an introductory nature, that paragraphs 2, 3, 4 and 5 referred to the

events which furnished the background and that the penultimate paragraph alone contained the grounds of detention as such and observed that they

were unable to see how factual allegations such as those mentioned in paragraphs 1 to 5 could be said to be merely introductory or as constituting

the background. It was in that context that it was held that (i) there was no justification for any distinction being made between introductory facts,

background facts and "grounds" as such and that (ii) all allegations of fact which led to the passing of the detention order constituted "grounds of

detention." The last paragraph was left out of consideration by their Lordships. In none of those two cases were their Lordships faced with the

situation of disparity between the detention order and the statement of grounds of detention. No question of examining the effect of disparity

between the detention order and the statement of grounds of detention was involved in any of those cases.

The other difference between Dube J. and Mishra J., is on the point as to whether the grounds of detention are vague so as to render him unable to

make effective representation. Dube J., is of opinion that none of them is so vague as to render the petitioner unable to effectively meet and explain

it. Mishra J., with particular reference to the first ground, holds the first ground to be vague and obscure and that alone to be sufficient to vitiate the

entire order. The petitioner''s grievance as to vagueness of the other grounds also appears to him to be justified; but, he does not think it to be

necessary to burden the order with examination of each of them for the reason that vagueness of the first ground alone is, in his view, sufficient to

vitiate the detention order.

The ground No. 1 reads as follows:

It does not disclose the irregularities complained of. It is not clear therefrom as to whether "2-2-1980" was the date of receipt of the complaint or

that of inspection by the Food Inspector. If "2-2-1980" was the date of receipt of the complaint, the date of inspection was missing. The date or

dates on which and the transaction or transactions in which black marketing in the distribution of diesel and kerosene was discovered to have been

done were also conspicuously absent. The person/persons with whom the transaction/transactions was/were made was/were not disclosed. The

quantities of diesel and kerosene were also not disclosed. The prices at which the same were found to have been sold were also not mentioned to

show as to how black marketing was found to have been done. Due to these omissions, it must, in my opinion, be held that the ground was vague

and obscure to such an extent as to render the petitioner unable to make effective representation. Thus, I concur with the view of Mishra J., in this

respect. Besides the first ground, in my opinion, at least the ground Nos. 2 , 2 , 2 and were also obviously vague and obscure, for want of essential

particulars, so as to render the petitioner unable to make effective representation.

Preventive detention is a serious invasion of personal liberty and such meagre safe-guards as the Constitution has provided against the improper

exercise of the power must be zealously watched and enforced by the Court. u/s 8 (1) of the Act read with Article 22(5) of the Constitution, the

detenu has a right to be furnished with particulars of the grounds of his detention sufficient to enable him to make a representation which, on being

considered, may give relief to him. The purpose of the requirement is to afford him the earliest opportunity of seeking redress against the order of

detention. But, as is obvious, that opportunity cannot be said to be afforded when it is established that a ground of detention is so vague that he

cannot possibly make an effective representation. It is up to the detaining authority to make his meaning clear beyond doubt, without leaving the

detenu to his own resources for interpreting the grounds. Otherwise, such grounds have to be regarded as vague so as to render it difficult, if not

impossible, for the detenu to make an adequate representation. The said constitutional requirement must be satisfied with respect to each of the

grounds of detention communicated to the detenu. Inclusion of even a single obscure or vague among other clear and definite grounds is an

infringement of the detenu''s right to be afforded the earliest opportunity of making a representation against the order of detention, i. e. to be

furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. These propositions

are clear from decisions of the Supreme Court in Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, and Mohd. Yusuf Rather v. State

of Jammu and Kashmir (supra). It follows that vagueness of the aforesaid grounds or at least that of the first ground alone is sufficient to vitiate the

order of the petitioner''s detention.

It goes without saying that the learned Government Advocate has urged the petitioner having not applied for particulars, none of the grounds of

detention can be held to be vague. He has placed reliance on Supreme Court decision in the case of Lawrence Joachim Joseph D''souza Vs. The

State of Bombay, . The allegation in that case was of espionage activities at a time when relations between the Portuguese Government and the

Indian Government on the affairs of Goa were somewhat delicate and it was not in public interest to disclose details. The allegations were not as

precise and specific as might have been desired. Their Lordships held that, having regard to the alleged activities of the detenu, it was not unlikely

that no more could be gathered or furnished. In the circumstances, the fact that no application for particulars was made was considered to be a

circumstance in holding that the grounds could not be considered to be vague. The facts and circumstances of the present case are entirely different

from those of that case. Therefore, decision in that case does not, in my opinion, apply to this case.

Mishra J. has further held that the petitioner''s detention is unwarranted on the additional ground that certain documents, particularly the Food-

Inspector''s report referred to in the first ground, were not furnished to the petitioner nor particulars thereof supplied to him despite his making a

grouse in that behalf in his representation. He has placed reliance on the following observations of their Lordships of the Supreme Court in the case

of Ramchandra A. Kamat Vs. Union of India (UOI) and Others, :

When the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds

of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to

him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds

of detention and would be ordinarily available with him--when copies of such documents are asked for by the detenu the detaining authority should

be in a position to supply them with reasonable expedition.

In that case, there was undue delay in furnishing copies of statements of some witnesses and documents referred to in the grounds of detention.

The copies were applied for by the detenu''s counsel for the purpose of making a representation against the detention order. Their Lordships

further observed as follows:

If there is undue delay in furnishing the statements and documents referred to in the grounds of detention the right to make effective representation

is denied. The detention cannot be said to be according to the procedure prescribed by law. When the Act contemplates the furnishing of grounds

of detention ordinarily within five days of the order of detention, the intention is clear that the statements and documents which are referred to in the

grounds of detention and which are required by the detenu and are expected to be in possession of the detaining authority should be furnished with

reasonable expedition.

The Act nowhere lays down that the detaining authority shall furnish the detenu with copies of statements and documents referred to in the grounds

of detention. The latter part of section 8 (1) lays down only that the authority shall afford him the earliest opportunity of making a representation.

Therefore, the authority is not bound to supply the copies unless the detenu asks for the same in order to enable him to make representation. If he

does not do so, he is not entitled to make a grouse in that respect. In the case of Ramchandra A. Kamat (supra), copies were asked for before

making representation for the purpose of making representation; whereas, in the present case, copies were never asked or applied for. Therefore,

the observations made by their Lordships in that case are, in my opinion, not applicable in the present case. Thus, I find myself unable to agree with

the above view expressed by Mishra, J.

Finally, I conclude that the detention of the petitioner is vitiated for the reasons that (i) in the statement of the grounds of detention, satisfaction of

the authority was stated to be on points foreign to section 3 (1) of the Act and (ii) at least 5 of the grounds of detention, particularly the first

ground, already mentioned in paragraph No. 13 above, were vague.

Thus, in my opinion, the petition must be allowed, the detention order set aside and the petitioner directed to be set at liberty forthwith.