Renu Kumar Bagalkoti Vs State of Telangana

Court: Andhra Pradesh High Court

Date of Decision: July 12, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Citation: (2016) 6 ALT 549 : (2016) 3 ALTCrl 409 : (2016) 2 AndhLDCriminal 966

Hon'ble Judges: Sri C.V. Nagarjuna Reddy and Sri G. Shyam Prasad, JJ.

Bench: Division Bench

Advocate: Sri A. Prabhakara Rao, Advocate, for the Petitioner; Government Pleader for Home (T.S.), for the Respondents

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Sri C.V. Nagarjuna Reddy, J. - Detention order vide proceedings in SB(I) No. 499/PD/S-1/2015, dated 09.09.2015, of respondent No. 2,

made under Sub-section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders,

Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, "the Act"), as approved and confirmed by respondent No. 1 vide

G.O. Rt. No. 3067, General Administration (Law & Order) Department, dated 21.11.2015, are challenged in this writ petition, filed by the wife of

one Kumar Gurappa Bagalkoti (Hereinafter referred to as "the detenu").

2. The detenu was detained by respondent No. 2 in exercise of his powers under the provisions of the Act by terming him as a "goonda". In

support of his satisfaction that the detenu was a "goonda", respondent No. 2 has relied upon four criminal cases instituted against the former for the

offence under Section 420 of Indian Penal Code (for short, "the I.P.C.") besides referring to eight earlier cases in the detention order. The

substance of the accusation against the detenu is that though illiterate, he mascarated himself as an Ayurvedic Doctor and established an ayurvedic

medicine shop under the name and style of "Siddhi Vinayaka Ayurvedic Bandar" in Kapadia Towers, Bapubhag Colony, Secunderabad and has

been cheating several members of public by promising cure of diseases such as Cancer and Spondylosis etc., and collecting huge amounts from

them.

3. The detention order has been questioned on multiple grounds, all of which do not need a reference having regard to the ground on which this

Court has chosen to dispose of the writ petition. The ground, which appealed to this Court and, argued by learned counsel for the detenu in the

writ petition is that while the order and grounds of detention were transcribed in Kannada and furnished to the detenu, several other documents

relied upon by the respondent No. 2 were in the language of either Telugu or English, which the detenu cannot understand.

4. In support of his submission, Sri A. Prabhakara Rao, learned counsel for the detenu, placed reliance on two Constitution Bench judgments of

the Supreme Court in Harikisan v. State of Maharashtra and others, AIR 1962 SC 911 and Hadibandhu Das v. District Magistrate,

Cuttack and another, AIR 1969 SC 43.

5. The learned Government Pleader for Home (T.S.), while opposing the above submission of learned counsel for the detenu, argued that from the

confessional statement of the detenu, recorded during the investigation, it is clearly evident that he is an illiterate and that, therefore, the language in

which the documents were supplied was not material in case of illiterates and that the gist of the entire material supplied to the detenu in English and

Telugu was explained to him by the Police. He has placed reliance on the judgment of the Supreme Court in Bhola Bhuiya v. The State of West

Bengal, 1975 (3) SCC 253 to buttress his submission that in case of illiterates, the language in which the material is supplied has no relevance.

6. In Harikisan, the Supreme Court held as under:

7. .....In order that the detenue should be in a position effectively to make his representation against the Order, he should have knowledge of the

grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him.

Communication, in this context, must therefore, mean imparting to the detenue sufficient knowledge of all the grounds on which the Order of

Detention is based. In this case the grounds are several and are based on numerous speeches said to have been made by the appellant himself on

different occasions and different dates. Naturally, therefore, any oral translation or explanation given on by the police officer serving those on the

detenue would not amount to communicating the grounds. Communication, in this context must mean bringing home to the detenue effective

knowledge of the facts and circumstances on which the Order of Detention is based.

8. We do not agree with the High Court in its conclusion in every case Communication of the grounds of detention in English, so long as it

continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is

conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and

circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the

requirements of the Constitution, the detenue must be given the grounds in a language which he can understand, and in a script which he can read,

if he is a literate person.

7. The view in Harikisan, was reiterated by another Constitution Bench judgment of the Supreme Court in Hadibandhu Das.

8. In Powanammal v. State of Tamil Nadu and another, (1999) 2 SCC 413, S.S.M. Quadri, J, speaking for the majority, held that non supply

of Tamil version of English documents to the detenu, who knew only Tamil language, renders her continued detention is illegal.

9. In order to overcome the above position of law, learned Government Pleader for Home (T.S.) submitted that as per the confessional statement

of the detenu, he has stated that he was illiterate and, therefore, the judgment in Bhola Bhuiya, squarely applies to this case.

10. In her affidavit, the wife of the detenu has inter-alia stated as under:

9. I submit that the detaining authority has furnished the copy of the detention order as well as grounds of detention in English as well as Kannada

language. My husband do not know reading and writing of English and Telugu language. My husband is a kannadiga and knows only Kannada

language. The detaining authority has furnished the documents relied on by it in English and Telugu language but the documents relied on by the

detaining authority were not translated in Kannada language. My husband due to non supply of the documents relied on by the Detaining authority

in Kannada language, could not make effective representation to the detaining authority and the 1st respondent. Failure to supply the supporting

documents enclosed along with grounds of detention, impaired the detenue to make effective representation against the detention order. The

detention order is liable to be set aside on this ground.

(emphasis added)

11. As regards the confessional statement, the same being self inculpatory is not admissible in evidence and, therefore, they cannot even be looked

into by any Court except to the extent of the statement which led to the discovery of anything during the course of investigation. Therefore, the

alleged statement of the detenu cannot be relied upon by the State in support of its plea that he is an illiterate.

As per the affidavit of his wife, as reproduced above, the detenu, is a Kannadiga and he knows only Kannada language. Other than the alleged

confessional statement, the State failed to produce any material before this Court to show that the detenu cannot read or write Kannada language.

Therefore, the averment of the wife of the detenu, made in her affidavit, filed in this writ petition, deserves acceptance. As, admittedly, the detenu

was not supplied some of the documents in Kannada language, he was deprived of his valuable right of making effective representation against his

detention and, therefore, following the settled legal principle laid down in the aforementioned judgments, the impugned detention order, as

approved and confirmed by respondent No. 1, is liable to be and, is, accordingly set-aside. The detenu is directed to be released forthwith.

12. In the result, the writ petition is allowed.

13. As a sequel to disposal of this writ petition, W.P.M.P. Nos. 26961 and 26962 of 2016 shall stand closed as infructuous.