Jitender Tyagi vs Delhi Administration & Anr on 3 October, 1989

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Author: M.M. Dutt

Bench: M.M. Dutt, K.N. Saikia

PETITIONER:
JITENDER TYAGI

Vs.

RESPONDENT:
DELHI ADMINISTRATION & ANR.

DATE OF JUDGMENT03/10/1989

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
SAIKIA, K.N. (J)

CITATION:
1990 AIR 487 1989 SCR Supl. (1) 341
1989 SCC (4) 653 JT 1989 (4) 155
1989 SCALE (2)717

ACT:
National Security Act, 1980: Section 3(2), (3) & (4).

Preventive Detention--Detention order Approval of--"No such order shall remain in force for more than twelve days after the making of order unless in the meantime approved by the State Government"-Computation of period of twelve days--The day on which order is passed--Whether should be included.

Detention--Delegation of powers on the Commissioner of Police--Whether ultra vires--Non-supply of copy of delegation order to the detenu--Whether prejudicial.

Interpretation of Statute--When the language is plain

and simple--The question of ascertaining legislative intent does not arise.

HEADNOTE:

Sub-section (4) of section 3 of the National Security Act, 1980 provides that no order passed by an officer mentioned in sub-section (3) shah remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government.

The Commissioner of Police, Delhi, in exercise of the powers conferred by sub-section (2) of section 3 of the Act, as delegated to him by the Delhi Administration, passed an order on 19.1.1989 detaining the petitioner- The order of detention was approved by the Administrator on 31.1.1989.

The petitioner filed a writ petition in this Court challenging the validity of the detention order contending that (i) the day on which the order of detention was passed should he included in the period of computation of twelve days and since the order of detention was approved on 31.1.1989, that is, on the thirteenth day after the expiry of twelve days, it had ceased to be in force; (ii) the non supply of the copy of order delegating the power of detention on the Commissioner of Police has seriously prejudiced the detenu; and (iii) there was serious non-application of mind by the detaining authority.

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Dismissing the petition, this Court,

HELD: 1. In computing the period of twelve days referred to in sub-section (4) of section 3 of the Act, the day on which the order of detention was passed should be excluded. Therefore the approval of the order of detention was made within twelve days after the making of the order of detention. [350D]

1.1 Sub-section (4) of section 3 has given a clear indication as to the computation of twelve days. It excludes the day on which the order is made. The word 'after' in sub-section (4) of section 3 of the Act is very significant and clearly excludes any contention that in computing the period of twelve days the day on which the order of detention is passed should be included. The period of twelve days has to be calculated 'after' the making of the order of detention, i.e. the day on which the cause of action arises has to be excluded in computing the period of time. [346E-F; 349D; 348H]

1.2 It is true that in sub-section (4) the officer making the order of detention shall forthwith report the fact to the State Government, but the word 'forthwith' will not be taken into consideration for the purpose of computing the period of twelve days inasmuch as there is clear indication that the said period shah be computed after the order is made. Computation of twelve days including the day on

which the detention order is made will be ignoring the direction of the legislature, as given in sub-section (4) itself, that the said period of twelve days will commence after the making of the detention order. [346F-G]

2. When the language of a statute is plain and simple, the question of ascertaining the intention of the legislature does not arise. [349D]

2.1 Sub-section (4) of section 3 admits of only one interpretation regarding the computation of twelve days and, accordingly, the question as to the adoption of the interpretation which ensures to the benefit of the detenu does not arise. [346H; 347A]

T.C. Basappa v. T. Nagappa, [1955] SCR 250; Haru Das Gupta v. State of West Bengal, [1972] 3 SCR 329 and Ratcliff v. Bartholomew, [1892] 1 QB 161, followed.

Nillapareddi Chandrasekhara Reddy v. The Government of Andhra Pradesh and Anr., [1974] Crl. LJ 158; C. Krishna Reddy and Anr. v. Commissioner of Police Hyderabad & Ors., [1982] Cr. LJ 592
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and Gulam Sarwar v. State of Bihar & Ors., [1973] BLJR 38, distinguished.

Smt. Manjuli v. Civil Judge, AIR 1970 Bom. 1 and In re: V.S. Mehta, AIR 1970 AP 234, approved.

3. The expression "in the meantime" in sub-section (4) of section 3 of the Act clearly indicates that the State Government can approve of the order of detention even on the day it is passed. The language of sub-section (4) of section 3 is plain and simple and the question whether the order of detention can be approved on the day it is passed or not does not at all arise. [349F]

Prabhu Narain Singh v. Superintendent, Central Jail, Varanasi, ILR 1961 1 All. 427, disapproved.

4. The Act does not provide for supplying a copy of an order under Section 3(3) of the Act. In the instant case, the said order has not been relied upon by the Commissioner of Police in passing the impugned order of detention. It may be that by virtue of the said order under section 3(3) of the Act, the Commissioner of Police could exercise the powers of the detaining authority under section 3(2) of the Act. But, that has nothing to do as to the subjective satisfaction of the Commissioner of Police in making the impugned order of detention. [351D-E]

5. In the instant case, a copy of the application for bail was with the detaining authority before he made the order of detention. So, it is not correct to say that the detaining authority proceeded on the basis that the detenu had made applications for bail in all the cases pending against him. Accordingly there was no non-application of mind by the detaining authority. [352A-B & C]

JUDGMENT:

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Crimi- nal) No. 184 of 1989.

(Under Article 32 of the Constitution of India). Kapil Sibbal, K.K. Lahiri, K.R. Nagaraja and R.S. Hegde for the Petitioner.

V.C. Mahanjan, T.V.S.N. Chari and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by DUTT, J. In this writ petition the petitioner has challenged the validity of the detention order dated January 19, 1989 passed under the National Security Act, 1980, hereinaf- ter referred to as 'the Act', by virtue of which the peti- tioner has been under detention since the said date. The allegations made in the grounds of detention need not be stated, for only legal submissions have been made on behalf of the petitioner in challenging the order of detention. The order of detention dated January 19, 1989 reads as follows:-

> "WHEREAS, I, Vijay Karan, Commissioner of Police, Delhi, am satisfied that with a view to prevent Sh. Jitender Tyagi s/o Sh. Ram Nath Tyagi, R/o VIII. Khajuri, Police Station. Kila, Distt. Meerut (Uttar Pradesh) aged at about 25/26 from acting in a manner prejudi- cial to the maintenance of public order, it is necessary to make an order directing that the said Sh. Jitender Tyagi may be detained. Now, therefore, in exercise of the powers conferred vide sub-section (2) of section 3 of the National Security Act, 1980 as delegated to me vide Delhi Administration, Delhi's order No. F2/1/88-H.P. II, dated 11.1.89. I hereby direct that the said Sh. Jitender Tyagi be detained and kept in Central Jail, Tihar, Delhi."

It, thus, appears from the order of detention that it was passed by the Commissioner of Police, Delhi, in exercise of the powers conferred by sub-section (2) of section 3 of the Act as delegated to him by the Delhi Administration. The order of detention was approved by the Administrator of Delhi by his order dated January 31, 1989. Paragraph 3 of the said order is in the following terms:

> "3. Now, therefore, in exercise of the powers conferred upon him by sub-section (4) of section 3 of the National Security Act, 1980, the Administrator hereby approves the order of the Police Commissioner dated 19.1.1989 de- taining Sh. Jitender Tyagi and further directs that Sh. Jitender Tyagi be kept in custody in Central Jail, Tihar, New Delhi.
>
> The first point that has been strenuously urged by Mr. Kapil Sibal, learned Counsel appearing on behalf of the petitioner, is that the order of detention not having been approved within a period of twelve days, as provided in sub-section (4) of section 3 of the Act, it had spent its force on the expiry of the said period and, accordingly, the detention of the petitioner is illegal. Section 3 of the Act provides for the power to make orders of detention under certain circumstances. Sub-section (4) of section 3 reads as follows:

"(4). When any order is made under this sec- tion by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply sub- ject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted."

Under sub-section (4) of section 3, "no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government". The question that arises for our consid- eration relates to the computation of the period of twelve days. To be more explicit, the question is whether in com- puting the period of twelve days, the day on which the order of detention is passed should be included or not. It is submitted on behalf of the petitioner that the day on which the order of detention was passed should be included and the order approving the detention having been passed on January 31, 1989, that is, on the thirteenth day after the expiry of twelve days, it had ceased to be in force. On the other hand, it is contended on behalf of the respondents that the day on which the detention order was passed should be excluded and, accordingly, the detention of the petitioner having been approved on January 31, 1989, it was quite within the period of twelve days. Further, it is the case of the respondents that the order of detention was, as a matter of fact, approved on January 26, 1989 and by the order dated January 31, 1989, the order of approval was communicated to the authorities concerned.

We may first consider the contention of the respondents that the order of detention was duly approved on January 26, 1989. A statement in that regard has been made in the coun- ter-affidavit of the respondents. We are, however, unable to accept the same. We have already extracted above paragraph 3 of the order of detention dated January 31, 1989 in which it has been categorically stated "the Administrator hereby approves the order of the Police Commissioner dated 19.1.1989 detaining Sh. Jitender Tyagi. " After the said categorical statement in paragraph 3, it is difficult to accept the contention of the respondents that the said order dated January 31, 1989 was made for the purpose of communi-

cating the approval of the order of detention. In our view, there can be no doubt, whatsoever, that the order of deten- tion was approved by the said order dated January 31, 1989. Now, we may consider the question as to the computation of twelve days as referred to in sub-section (4) of section

3. Sub-section (4), inter alia, provides that when an order is made by an officer mentioned in sub-section (3), he shall forthwith report the facts to the State Government. It is contended on behalf of the petitioner that under sub-section (4), the officer has to act forthwith after the making of the order in reporting the fact to the State Government and this is sufficient indication that the day on which the order of detention is made should be included in computing the period of twelve days.

In our opinion, sub-section (4) has given a clear indi- cation as to the computation of twelve days. The period of twelve days has to be calculated 'after' the making of the order of detention. Thus, it is apparent that the period of twelve days comes after the making of the order of deten- tion. It is true that in sub-section (4), the officer making the order of detention shall forthwith report the fact to the State Government, but the word 'forthwith' will not be taken into consideration for the purpose of computing the period of twelve days inasmuch as there is a clear indica- tion that the said period shall be computed after the order is made. In other words, sub-section (4) itself excludes the day on which the order is made. Computation of twelve days including the day on which the detention order is made will be ignoring the direction of the legislature, as given in sub-section (4) itself, that the said period of twelve days will commence after the making of the detention order. It is, however, submitted that when two interpretations are possible, that which enures to the benefit of the detenu should be accepted. In our opinion, sub-section (4) admits of only one interpretation regarding the computation of twelve days and, accord-

ingly, the question as to the adoption of the interpretation which enures to the benefit of the detenu does not arise. The view which we take, is in accordance with the well established canons of interpretations. It has been stated in Stroud's Judicial Dictionary, Third Edition, Volume I, page 86, as follows:

> "Where an act has to be done within so many days "after" a given event, the day of such event is not to be reckoned In Smt. Manjuli v. Civil Judge, AIR 1970 Bom. 1, the provision of section 15(1) of the Village Panchayats Act, 1958 came up for interpretation before the Nagput Bench of the Bombay High Court. Section 15(1), inter alia, provides that any person who is qualified to vote is entitled to challenge the validity of the election "within 15 days after the date of the declaration of the result of the election".

The High Court in interpreting the provision rightly laid stress on the word "after" and held that the day of which the result was declared must be excluded. This Court had also occasion to construe rule 119 of the Election Rules framed under the Representation of the People Act in T.C. Basappa v. T. Nagappa, [1955] SCR 250. Rule 119 provides, inter alia, that an election petition against a returned candidate is to be presented at any time after the publica- tion of the name of such candidate under section 67 of the Act, but not later than 14 days from the date of publication of the notice in the official gazette under rule 113. Mukh- erjea, J. (as he than was) speaking for the Bench observed as follows:

The High court seems to think that in comput- ing period of 14 days the date of publication is to be included. This seems to us to be an unwarranted view to take which is opposed to the ordinary canons of construction. Dr. Tek Chand appearing for the respondent No. 1, plainly confessed his inability to support this view and we must hold therefore that there is no question of the Tribunal's enter- taining election petition after the prescribed period in the present case."

In re: V.S. Mehta, AIR 1970 A.P. 234 which is a decision of the Andhra Pradesh High Court, relating to the computa- tion of the period of three months in section 106 of the Factories Act Section 106 provides that no court shall take cognizance of any offence punishable under the Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector. The question before the High Court was whether in computing the said period of three months, the day on which the offence was alleged to be committed should be excluded or not. The Andhra Pradesh High Court has taken the view that the term "within three months of the date" in section 106 of the Factories Act means 'within three calendar months after the commission of the offence came to the knowledge of an In- spector' and, consequently, the date of the knowledge, that is, the date of inspection should be excluded in computing the period of three months. That interpretation resulting in the exclusion of the date of knowledge should be made as the High Court considered the expression "within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector" as "within three months after the date on which etc ..... ". Thus, what is significant to be noticed is the word "after" which the High Court has substituted for the word 'of' in the expression "of the date" in section 106.

In Haru Das Gupta v. State of West Bengal, [1972] 3 SCR 329, the question was whether under section 12 of the West Bengal (Prevention of Violent Activities) Act, 1970, the order or decision of the State Government confirming the detention order was made within three months from the date of detention. In holding that in computing the said period of three months, the date of detention shall be excluded, this Court has laid down that the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. This Court has agreed to the view expressed by Wills, J. in Ratcliff v. Bartholomew, [1892] 1 Q.B. 161 that a complaint under the Prevention of Cruelty to Animals Act filed on June 30 in respect of an act alleged to have been committed on May 30 was "within one calendar month after the cause of such complaint shall arise". The principle on the basis of which that view was expressed by Wills, J. is that the day on which the cause for the complaint arose had to be excluded while computing the period within which under the Act, the complaint had to be filed.

Thus, it is apparent from the above decision that the day on which the cause of action arises has to be excluded in computing a particular period of time and, in the instant case, such an exclusion has to be made in view of the word "after" in sub-section (4)

of section 3 of the Act.

The petitioner has, however, placed reliance on a few decisions which will be stated presently. In Prabhu Narain Singh v. Superintendent, Central Jail, Varanasi, ILR (1961) 1 All. 427 the Allahabad High Court has, on an interpreta-

tion of sub-section (3) of section 3 of the Preventive Detention Act, 1950, which is verbatim the same as subsec- tion (4) of section 3 of the Act, with which we are con- cerned, held that in computing the period of twelve days, the day on which the order of detention is passed should be included. One of the reasons for the view expressed by the Allahabad High Court, which is strongly relied on by the learned Counsel for the detenu, is that if the day on which the order is passed is to be excluded . from twelve days prescribed for the approval of the said order, then the consequence of the acceptance of this interpretation would be that it would not be possible for the State Government to approve of the order until after the day on which it was passed had expired. It has been observed that such an unrea- sonable consequence was not contemplated by the legislature. When the language of a statute is plain and simple, the question of ascertaining the intention of the legislature does not arise. In our opinion, the word 'after' in sub- section (4) of section 3 of the Act is very significant and clearly excludes any contention that in computing the period of twelve days the day on which the order of detention is passed should be included. The Allahabad High Court has omitted to consider the word "after" in the section. We are unable to subscribe to the view of the High Court that if the day on which the order of detention was made is excluded from the calculation of the period of twelve days, in that case, the position would be that it would not be possible for the State Government to approve of the order of deten- tion until after the day on which it was passed had expired. The expression "in the meantime" in sub-section (4) of section 3 of the Act clearly indicates that the State Gov- ernment can approve of the order of detention even on the day it is passed. The language of sub-section (4) of section 3 is plain and simple and the question whether the order of detention can be approved on the day it is passed or not does not at all arise. In our opinion, Prabhu Narain Singh's case (supra) has not correctly interpreted the provision of section 3(3) of the Preventive Detention Act, 1950 in regard to the computation of the period of twelve days. The learned Counsel for the detenu has placed reliance upon two other decisions, namely, Nillapareddi Chandrasekhra Reddy v. The Government of Andhra Pradesh and Another, [1974] Crl. L.J. 158 and C. Krishna Reddy and Another v. Commissioner of Police, Hyderabad and Others, [1982] Cr. L.J. 592, both are of the Andhra Pradesh High Court. These two decisions relate to the commu- nication to the detenu of the grounds of detention not later than five days from the date of detention as provided in section 8(1) of the Maintenance of Internal Security Act, 1951. We do not think that we should be justified in ex- pressing any opinion as to the correctness or otherwise of the computation of the said period of five days as made in these two decisions, for the language that is used in sub-section (4) of section 3 of the Act, with which we are concerned, is different from that used in section 8(1) of the Maintenance of Internal Security Act, 1951. Similarly, the decision of the Patna High Court in Gulam Sarwar v. State of Bihar and Others, [1973] B.L.J.R. 38 relied on by the respondents also related to the computation of the period of five days, as contained in section 8(1) of the Maintenance of Internal Security Act, 1951. In this case, a contrary view has been expressed. In our view all these decisions are of no help to us having regard to the differ- ence in language of the provision with which we are con- cerned. Be that as it may, we have no hesitation in holding that in

computing the period of twelve days referred to in sub-section (4) of section 3 of the Act, the day on which the order of detention was passed should be excluded and, upon such computation, it must be held that the approval of the order of detention was made within twelve days after the making of the order of detention.

The next point that has been urged on behalf of the detenu is that the order dated January 11, 1989 of the Administrator of the Union Territory of Delhi, directing that during the period from 19.1.1989 to 18.4. 1989 the Commissioner of Police, Delhi, may also exercise the powers of detaining authority under sub-section (2) of section 3 of the Act, is ultra vires section 3(3) of the Act. Section3(3) provides that if, having regard to the circumstances pre- vailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that during such period, as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in subsection (2), exer- cise the powers conferred by the said sub-section. It is contended that as no circumstances, as mentioned in section 3(3) in respect of which satisfaction has to be made by the Administrator of Delhi, have been stated in the order, nor in the grounds of detention, the said order dated January 11, 1989 is illegal and invalid. This point has not been taken in the writ petition and, accordingly, the Delhi Administration did not get an opportunity to controvert the allega-

tions made for the first time in the argument. The point is not one involving only a question of law, but it also in- volves question of fact. In the circumstances, we do not think we shall be justified in allowing the petitioner to take the point for the first time in the argument. The next point that has been urged by the learned Coun- sel for the petitioner is that the detaining authority, that is, the Commissioner of Police, Delhi, not having supplied to the detenu a copy of the said order dated January 11, 1989 of the Administrator of Delhi directing him to exercise the powers of the detaining authority under subsection (2) of section 3 of the Act, a serious prejudice has been caused to the detenu in that, if the copy of the said order had been supplied, the detenu might have contended that no such circumstances, as contemplated by sub-section (3) of section 3 of the Act, were prevailing and that the delegation of the powers on the Commissioner of Police of Delhi was illegal and invalid and, consequently, the order of detention was inoperative and void. The Act does not provide for supplying a copy of an order under section 3(3) of the Act. The said order has not been relied upon by the Commissioner of Police in passing the impugned order of detention. It may be that by virtue of the said order dated January 11, 1989 passed under section 3(3) of the Act, the Commissioner of Police could exercise the powers of the detaining authority under section 3(2) of the Act. But, that has nothing to do as to the subjective satisfaction of the Commissioner of Police in making the impugned order of detention. We do not think there is any substance in the contention made on behalf of the detenu and it is, accordingly, rejected.

In the grounds of detention it is, inter alia, stated as follows:

> "Though Sh. Jitender Tyagi is in judicial custody, it is reported that applica- tion for his bail has been filed in the court in case FIR No. 6 dated 7.1.89 u/s 25/54/59 Arms Act, P.S. Yamuna Vihar, Delhi. It is likely that he may be released in these cases on

> bail and again indulge in nefarious activi- ties of extortion and intimidation. Keeping in view his activities, I have issued order for his detention under section 3(2) of the Na- tional Security Act, 1980, so that his crimi- nal activities which are prejudicial to the maintenance of public order, could be stopped."

It is urged on behalf of the detenu that only in one case the detenu has made an application for bail, but in the said statement of the Commissioner of Police in the grounds of detention, he was proceeding on the assumption that in all the cases the detenu had made applications for bail. Accordingly, it is submitted that this shows complete non-application of mind by the detaining authority. We are unable to accept the contention. Mr. Mahajan, learned Counsel for the respond- ents, has produced before us the records of the detaining authority from which it appears that a copy of the applica- tion for bail was with the detaining authority before he made the order of detention. So, the contention that the detaining authority proceeded on the basis that the detenu had made applications for bail in all the cases pending against him is not correct. There is, therefore, no sub- stance in this contention.

Equally non-meritorious is the contention that a copy of the application for bail has not been supplied to the de- taining authority for his consideration. It is submitted that if such a copy had been supplied to the detaining authority, he would have considered the statement of the detenu that he was falsely implicated in these cases. The contention is based on erroneous assumption that a copy of the bail application was not supplied to the detaining authority. Indeed, as noticed already, a copy of the bail- 'application was with the detaining authority before he had passed the order of detention. This contention is also rejected.

No other point has been urged in this writ petition. For the reasons aforesaid, the writ petition is dismissed.

T.N.A. Petition dismissed.