Mohd. Athar Rizvi vs State on 29 May, 1950

Equivalent citations: AIR1951ALL456, AIR 1951 ALLAHABAD 456

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. This is an application for a writ in the nature of habeas corpus under Section 491, Criminal P. C., and Article 226, Constitution of India, presented on behalf of Syed Mohammad Athar Rizvi who is under detention in District Jail, Kanpur, under orders of the District Magistrate of Kanpur purported to have been passed in exercise of the powers given to him under Section 3, Preventive Detention Act, 1950. The first point that was initially urged in support of this application, viz., that the Preventive Detention Act, 1950, was ultra vires of the Indian Parliament inasmuch as the main provisions of it were in conflict with the provisions of Part III of the Constitution, has now been concluded by the decision of the Supreme Court in the case of A. K. Gopalan (A. I. R. (37) 1950 S. C. 27 : 61 Cr. L. J. 1383), a Madras detenu. It has been held by a majority of the Judges of the Supreme Court in that case that except for Section 14, Preventive Detention Act, 1950, the rest of the Act is valid. This decision of the Supreme Court disposes of this preliminary point.

2. A second point that has been urged on behalf of the detenu again raises the same question of the validity of the provisions of this Act from another point of view. It has been contended that under Article 21, Constitution of India, a citizen can be deprived of his liberty only by a procedure established by law and in this case the Preventive Detention Act of 1950 does not fully prescribe the procedure by which the liberty may be taken away. This contention is based principally on the ground that Section 3, Preventive Detention Act, empowers the Central Government or the State Government or where the District Magistrate may exercise those powers the District Magistrate to direct detention if satisfied, with respect to any person, that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers or the security of India or the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community, but does not lay down the procedure by which the Central Government, the State Government or the District Magistrate is to arrive at the satisfaction in this behalf. The contention of the learned counsel for the applicant is that the main provision of this section consists in directing the Central Government, the State Government or the District Magistrate to be satisfied that it is necessary to pass such an order for one of the purposes mentioned in that section, and this Act ought to have given the procedure by which the satisfaction should have been arrived at. On the other hand, the learned Government

Advocate has contended that the principal provision of Section 3 is the power to pass an order of detention and the satisfaction of the Central Government, the State Government or the District Magistrate is only a step to be gone through before that order can be passed. The satisfaction itself is, therefore, a step in the procedure which has to be gone through before a person is deprived of his liberty. The subsequent procedure is also provided by this Act in the subsequent sections of the Act whereby the order passed is scrutinized and either confirmed or set aside. It was contended that all that the Courts could see was whether the law did prescribe the procedure or not by which the liberty of the citizen could be taken away, but they were not competent to examine whether that procedure was in accordance with the principles of natural justice or not and also whether the procedure was a complete procedure or an incomplete procedure according to the views of the Court. Article 21 of the Constitution left it entirely at the discretion of the Legislature to prescribe the procedure and if the Legislature prescribed any particular procedure, the Court was not competent to go into the question, by importing its own views, whether the procedure was a complete or incomplete one. All that the Courts-could see was whether the main essentials of the procedure required had been prescribed by the law. This contention of the learned Government Advocate is quite correct. Since Article 21 permits deprivation of liberty by procedure established by law, it is obvious that the discretion of deciding what the procedure should be and to what extent it needs to be prescribed has been given entirely to the Legislature. Obviously it cannot be necessary that every detailed step of the procedure need be mentioned. In the present case, the Legislature empowered the authorities to make an order of detention on being satisfied that one of the conditions laid down in Section 3 exists, and it does not appear to be necessary that the Legislature should also have gone on to say by what process that satisfaction should have been arrived at. It is entirely at the discretion of the authority making the order to satisfy itself in that behalf by whatever means may be available to it. In fact when a preliminary order is passed taking away the liberty of a citizen, the principle laid down in almost all laws is that the order taking away the liberty is passed on some prima facie suspicion or satisfaction of the authority directing that the liberty be taken away, and the detailed procedure for subsequently maintaining that order taking away the liberty comes thereafter. In the Criminal Procedure Code itself, the main section which empowers a person to be taken into custody is Section 54. In this section even a junior police officer is given the power to arrest a citizen and take away his liberty if he has a reasonable suspicion that a cognizable offence has been committed. No procedure is prescribed by which the police officer is to ensure that a reasonable suspicion exists. It is only subsequently, when the arrest happens to be challenged, that the duty may be cast on him to show that his suspicion was reasonable. Similarly, in the Preventive Detention Act all that is required is that the authority making the order of detention should satisfy itself as laid down in Section 3 and it is subsequently that the propriety of that satisfaction in certain respects comes for scrutiny by the procedure laid down by the Act. The grounds on which the person is detained have to be communicated to him under Section 7 and thereafter the detenu is given a right to make a representation. The representation is considered by an Advisory Board and the Central or the State Government under Sections 10 or 11 and in some cases by an officer not below the rank of a District Judge and the State Government under Section 12. Thus the Act does prescribe a procedure by which the satisfaction arrived at by the Magistrate is subsequently scrutinized and tested. There was really no need for the Legislature to lay down how the initial satisfaction should be arrived at. This ground taken to challenge the validity of the Preventive Detention Act of 1950, therefore, has no force. I may mention that impliedly this point could have been treated as having

been decided by the Supreme Court in the case of A. K. Gopalan (A. I. R. (37) 1950 S. C. 27 : 51 Cr. L. J. 1383) mentioned above where all the provisions of this Act except Section 14 were held to be valid, though this point does not appear to have been specifically dealt with.

3. Coming to the merits of the case, it has been contended on behalf of the applicant that the grounds of detention communicated to the detenu do not bear any connection with the purposes for which the preventive detention has been ordered and that the District Magistrate could not possibly have been satisfied, bona, fide, on these grounds that it was necessary to order detention of the applicant for the purposes mentioned in the order. Pour grounds of detention were communicated to the applicant. The first ground is that, for some time past, he had been in correspondence with nationals of Pakistan and passing them on information from this State. As contended by the learned counsel for the applicant, this ground is too vague to be taken into consideration. No details have been given of the correspondence about which the District Magistrate had information. At least the person to whom the correspondence was addressed and the rough period when the correspondence took place should have been given in the grounds of detention. Similarly, no inkling at all is given in the grounds of the type of information that was said to have been passed on by the applicant. It is true that under Sub-section (2) of Section 7, Preventive Detention Act 1950, the District Magistrate was not required to disclose facts which he considered to be against the public interest to disclose, but at the same time the purpose of communicating the grounds of detention would be entirely defeated if sufficient details were not given which would enable the detenu to make an effective representation. It is possible that it may not have been in the public interest to disclose what the exact information passed on was, but it should certainly have been possible to indicate what that information related to, whether it was confidential information and whether it affected the public order or security of the State. It should also have been possible to indicate under what circumstances the applicant had himself received that information. This ground of detention has, therefore, to be disregarded. The remaining three grounds may be read together. These three grounds indicate that the applicant wrote a letter on 19-3-1950, under a fictitious name in order to obtain a permit to migrate to Pakistan while he was in active service as a member of the Police in this State. It also appears that the applicant was in possession of various secrets of the Police Department as he had worked in the District Intelligence Branch of Kanpur. Ground 4 indicates that the disclosure of the secrets which the applicant had in his possession was likely to affect the security of the State. How the communication of these secrets or the migration of the applicant stealthily to Pakistan could possibly affect the maintenance of public order in Kanpur does not appear at all from the order. However the learned Government Advocate has justified this detention on the ground of the migration of the applicant to Pakistan, and the risk that he might disclose there secrets in his possession was likely to affect the security of this State. In view of Sub-section (2) of Section 7, Preventive Detention Act, it was not necessary for the District Magistrate to disclose the details of the secrets which were in possession of the applicant as their disclosure would obviously be against the public interest. The applicant, however, must have known what those secrets were so that the communication of this ground to the applicant without giving further facts was sufficient compliance with the provisions of Section 7. It is not possible for me to hold the view that the secrets in the possession of the applicant which could be disclosed in Pakistan must be such that they would not affect the security of the State. That is a matter which cannot be inquired into in these proceedings. All that can be seen in these proceedings is whether the grounds communicated are

connected with the order of preventive detention and whether the order made by the District Magistrate was made bona fide or mala fide. In this case, as has been mentioned above, it is not possible to hold that there is no connection between the grounds and the order of detention. The connection is directly disclosed in the grounds themselves where it is said that the disclosure of the secrets in the possession of the applicant is likely to affect the security of the State. It cannot also be said that the satisfaction of the District Magistrate under these circumstances could not be bona fide. If the applicant has in his possession secrets the disclosure of which in Pakistan would affect the security of the State, the District Magistrate would be justified in passing this order of detention. On behalf of the applicant, an affidavit has been filed challenging the correctness of the grounds of detention disclosed to him. The question of correctness of these grounds of detention cannot be inquired into by this Court. All that this Court can see is whether the District Magistrate's satisfaction was bona fide or not. As a matter of fact, the Preventive Detention Act 1950, itself provides the forum where the correctness of the grounds of detention is to be examined. That forum is provided in Section 9 and Section 12 of the Act. Considering all these circumstances I am of the view that the District Magistrate's order directing detention of the applicant was in compliance with the provisions of the Preventive Detention Act 1950, and was consequently valid.

4. The application is dismissed.