Gamit Sandhi Sarif Chaku vs State Of Gujarat And Another on 14 August, 1992

Equivalent citations: AIR1992SC2204, 1992CRILJ3784, 1993SUPP(1)SCC629, AIR 1992 SUPREME COURT 2204, 1992 AIR SCW 2663, 1993 SCC(CRI) 419, 1993 (1) SCC(SUPP) 629, (1993) 1 PAT LJR 42

Bench: S.R. Pandian, K. Ramaswamy

JUDGMENT

1. Special leave granted.

2. The detenu, namely, Gamit Sandhi Sarif Chaku has preferred this appeal challenging the correctness of the judgment rendered by the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 1256 of 1991 dismissing the application on 11-12-91.

3. The detaining authority namely the second respondent has passed the impugned detention order on 17-8-91 under Sub-section (1) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (Gujarat Act 16 of 1985) (hereinafter referred to as the Act) with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and directed him to be detained in the Central Jail, Baroda.

4. The detenu made a representation dated 23-9-91 and the same was rejected on 5-10-91. Meanwhile the Advisory Board held its meeting on 19-9-91 (which date is not disputed by the appellant herein) and the Advisory Board gave its opinion on 19-9-91 itself to the effect that there is sufficient cause for the detention of the detenu. On receipt of the opinion of the Advisory Board the State Government passed the order of confirmation under Section 13(1) of the Act by its order dated 25-9-91 which order of confirmation was served on the detenu on 28-9-91.

5. Mr. Anil Nauriya appearing on behalf of the appellant/detenu after taking us through the records made three pronged attacks questioning the validity of the detention order: the first ground on which he attacks the detention order is that the statements of the witnesses are very vague and hence the detenu was deprived of making an effective representation to the Government. The High Court has considered a similar submission and has rejected the same for the reasons mentioned in its impugned order. When a question was addressed to the counsel by us as to whether the detenu made any complaint to the detaining authority that he was unable to make an effective representation for lack of particulars and asked for further particulars, the counsel is not in a position to reply, evidently that the copy of the representation is not available with him. We, after going through the records did not find any reason to depart from the conclusion arrived by the High Court. Hence the first contention is rejected.

6. The second ground on which he attempts to invalidate this order of detention is that the detenu cannot be said to be a dangerous person within the meaning of Section 2(c) of the Act. This ground has neither been taken as one of the grounds in the writ petition nor any such argument appears to have been advanced before the High Court. Leave apart, going through the materials placed before us we do not see any force in the second contention also.

7. The third legal submission made by the learned Counsel is that the detaining authority had disposed of the representation made by the detenu on 5-10-91 after the Advisory Board had submitted its report dated 19-9-91 on the basis of which the order of confirmation was made on 25-9-91. In other words, the grievance of the appellant is that his representation dated 23-9-91 was rejected on 5-10-91 after the receipt of the report of the Advisory Board by the Government. According to the learned Counsel for the respondent that the opinion of the Advisory Board itself was received even on 19-9-91 i.e. four days earlier to the submission of the representation made by the detenu. The counsel for the appellant has placed much reliance on the decision of this Court in Vimal Chand Jawantraj Jain v. Shri Pradhan in which this Court has observed that the detaining authority is bound to consider the representation of the detenu on his own, keeping in view of the facts and circumstances relating to the case and to come to its own decision whether to confirm the detention or to release the detenu. Reverting to the facts of the case, it is seen that the detenu sent his representation on 23-9-91. Unfortunately the State is not in a position to help and assist the Court as to on which date the representation was received by the Government i.e. either before or after 25-9-91. Even assuming that the representation was sent on 23-9-91 itself by the detenu on which date he had signed the representation there were only two days between the submission of the representation and the passing of the confirmation order under Section 13 of the Act. The reading of the rejection shows that the rejection was not based on the opinion of the Advisory Board but the Government on its own has rejected the representation after independent consideration. In the case relied upon by the learned Counsel facts are entirely different. Admittedly the representation was received by the Government in that case, cited even before the Advisory Board was convened and the Government had forwarded that representation to the Advisory Board which after considering the representation gave its opinion that there was sufficient cause for detention and the State Government rejected the representation in that case only ! on the basis of the opinion of the Advisory Board. It is also pointed out in that decision first respondent therein namely the State Government had practically admitted the facts that the representation was rejected only on the basis of the Advisory Board. Above all this Court sent for the entire file and after having gone through the file was satisfied that the State Government had not considered that representation independent of the opinion of the Advisory Board. It was only under those circumstances this Court allowed that appeal. But coming to the present case the facts are entirely different. Moreover under Section 15 of the Act the State Government can revoke the detention order at any stage. Hence this submission is not available to the petitioner. Incidentally we may point out that this contention has never been taken either before the High Court or in the grounds of SLP or in any one of the two additional grounds later on filed in this case. For all the reasons stated above, we see no force in any one of the submissions made by the learned Counsel and this appeal is dismissed as devoid of any merit.