State Of Maharashtra vs Prabhakar Pandurang Sangzgiri And ... on 6 September, 1965

Equivalent citations: 1966 AIR 424, 1966 SCR (1) 702, AIR 1966 SUPREME COURT 424, 1966 MADLJ(CRI) 377, (1966) 1 SCR 702, (1966) 1 SCWR 238, 1966 MAH LJ 141, 1966 MPLJ 165, 1966 SCD 405, (1966) 1 SCJ 679, 1966 (1) SCJ 967, 1968 BOM LR 481, 68 BOM LR 481

Bench: K.N. Wanchoo, J.C. Shah, S.M. Sikri, V. Ramaswami

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
PRABHAKAR PANDURANG SANGZGIRI AND ANOTHER

DATE OF JUDGMENT:
06/09/1965

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
WANCHOO, K.N.
SHAH, J.C.
SIKRI, S.M.
RAMASWAMI, V.

CITATION:
1966 AIR 424 1966 SCR (1) 702
CITATOR INFO :
R 1974 SC2092 (7)
RF 1976 SC1207 (48,49,144,360,475,547)
R 1977 SC1027 (23,33)
RF 1981 SC 746 (4)
RF 1981 SC1675 (57)
RF 1983 SC 361 ((2)18)
RF 1983 SC 465 (5,16,17)
RF 1985 SC 231 (2,3)

ACT:
Defence of India Rules, 1962, sub-r. 4 of r. 30 and Bombay Conditions of Detention Order, 1951-Book written by detenu in jail-Request to send it out of jail for publication-State Government whether can refuse request -High Court whether can he moved under Constitution of India, Art. 226.

HEADNOTE:

The first respondent was detained by the Government of Maharashtra under r. 30(1) (b) of the Defence of India Rules, 1962. The conditions of detention under sub-rule 4 of r. 30 of -the said rules were prescribed to be the same as those under the Bombay Conditions of Detention Order, 1951. While so detained the first respondent wrote a book of scientific interest and sought permission from The State Government to send it out of jail for publication. The request having been rejected he filed a writ petition under Art. 226 of the Constitution praying for a direction to the State Government to permit him to send out the manuscript for Publication. The High Court held that The book was in no way prejudicial to the defence of India etc., and allowed the petition. The State Government by special leave appealed to this Court.

It was contended on behalf of the, appellant that the first respondent not being a free person could exercise only such privileges a,-, were conferred on him by the order of detention, and the Bombay Conditions of Detention Order, 1951 which regulated the terms of the respondent's detention did not confer on him any privilege or right to write a book and send it out of the prison for publication.

HELD : (i) It cannot be said that the Bombay Conditions of Detention Order, 1951 which lays down the conditions regulating the restrictions on the liberty of a detenu, conferred only certain privileges on the detenu. If this argument were to be accepted it would mean that the detenu could be starved to death, if there was no condition providing for giving food to the detenu. In the matter of liberty of a subject such a construction shall not be given to the said rules and regulations unless for compelling reasons. [7O8 C-D]

(ii) The said conditions regulating the restriction on the personal liberty of a detenu are not privileges conferred on him, but are the conditions subject to which his liberty can be restricted. As there is no condition in the Bombay Conditions of Detention Order, 1951, prohibiting a detenu from writing a book or sending it for publication, the State of Maharashtra in refusing to allow the same infringed the personal liberty of the first Respondent in derogation of the law whereunder he was detained. [708 E]

(iii) The effect of the President's order under Art. 359 of the Constitution was that the right to move the High Court or the Supreme Court remained suspended during the period of emergency if a person was deprived of his personal liberty under the Defence of India Act, 1962, or any rule or order made thereunder. If a person was deprived of his personal liberty not under the Act or rule or order made thereunder but in contravention thereof his right to move

the said courts in that regard would not be suspended. [705 C-D]
703
Since the State Government's refusal to allow publication of the first respondent's book was in contravention and derogation of the 'law under which he was detained he had the right to move the High Court under Art. 226 and the said High Court was empowered to issue an appropriate writ or direction to the said Government to act in accordance with law.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 107 of 1965.

Appeal by special leave from the judgment and order, dated June 22, 1965 of the Bombay High Court in Criminal Applica- tion No. 613 of 1965.

Niren De, Additional Solicitor-General and B. R. G. K. Achar, for the appellant.

R. K. Garg, D. P. Singh, M. K. Ramamurthi and S. C. Agar- wala for respondent No. 1.

The Judgment of the Court was delivered by Subba Rao J. Prabbakar Pandurang Sanzgiri, who has been detained by the Government of Maharashtra under S. 30(1)(b) of the Defence of India Rules, 1962, in the Bombay District Prison in order to prevent him from acting in a manner pre- judicial to the defence of India, public safety and maintenance$ of public order, has written, with the permission of the said Government, a book in Marathi under the title "Anucha Antarangaat" (Inside the Atom). The learned Judges of the High Court, who had gone through the table of contents of the book. expressed their opinion on the book thus :

> "..... we are satisfied that the manuscript book deals with the theory of elementary particles in -in objective way. The manuscript does not purport to be a research work but it purports to be a book written with a view to educate the people and disseminate knowledge regarding quantum theory."

The book is, therefore, purely of scientific interest and it cannot possibly cause any prejudice to the defence of India, public safety or maintenance of public order. In September, 1964, the detenu applied to the Government of Maharashtra seeking permission to send the manuscript out of the jail for publication; but the Government by its letter, dated March 27, 1965, rejected the request. He again applied to the Superintendent, Arthur Road Prison, for permission to send the manuscript out and that too was rejected. Thereafter, he filed a petition under Art. 226 of the Constitution in the High Court of Maharashtra at Bombay for directing the State of Maharashtra to permit him to send out the manuscript of the book written by him for its eventual publication. The Government of Maharashtra in the counter-affidavit did not allege that the publication of the said book would be prejudicial to the objects of the Defence of India Act, but averred that the Government was not

required by law to permit the detenu to publish books while in detention. The High Court of Bombay held that the civil rights and liberties of a citizen were in no way curbed by the order of detention and that it was always open to the detenu to carry on his activities within the conditions governing his detention. It further held that there were no rules prohibiting a detenu from sending a book outside the jail with a view to get it published. In that view the High Court directed the Government to allow the manuscript book to be sent by the detenu to his wife for its eventual publication. The State of Maharashtra has preferred the present appeal against the said order of the High Court. The contentions of the learned Additional Solicitor General may be briefly stated thus : When a person is detained he loses his freedom; he is no longer a free man and, therefore, he can exercise only such privileges as are conferred on him by the order of detention. The Bombay Conditions of Detention Order, 1951. which regulates the terms of the first respondent's detention, does not confer on him any privilege or right to write a book and send it out of the prison for publication. In support of his contention he relies upon the observations of Das, J., as he then was, in A. K. Gopalan v. State of Madras(1) wherein the learned Judge has expressed the view, in the context of fundamental rights, that if a citizen loses the freedom of his person by reason of a lawful detention, he cannot claim the rights under Art. 19 of the Constitution as the rights enshrined in the said article are only the attributes of a free man.

Mr. Garg, learned counsel for the detenu, raised before us the following two points : (1) a restriction of the nature imposed by the Government on the detenu can only be made by an order issued by the appropriate Government under cls. (f) and (h) of sub-r. (1) of r. 30 of the Defence of India Rules, 1962, hereinafter called the Rules, and that too in strict compliance with s. 44 of the Defence of India Act, 1962, hereinafter called the Act, and that as the impugned restriction was neither made by such an order nor did it comply with s. 44 of the Act, it was an illegal restriction on his personal liberty; and (2) neither the detention order nor the (1) [1950] S.C.R. 88, 291.

conditions of detention which governed the first respondent's detention enabled the Government to prevent the said respondent from sending his manuscript book out of the prison for publication and, therefore, the order of the Government rejecting the said respondent's request in that regard was illegal.

Article 358 of the Constitution suspends the provisions of Art. 19 of Part III of the Constitution during the period the proclamation of emergency is in operation; and the order passed by the President under Art. 3 5 9 suspended the enforcement, inter alia, of Art. 21 during the period of the said emergency. But the President's order was a conditional one. In effect it said that the right to move the High Court or the Supreme Court remained suspended if such a person had been deprived of his personal liberty under the Defence of India Act, 1962, or any rule or order made thereunder. If a person was de lived of his personal liberty not under the Act or a rule or order made thereunder but in contravention thereof, his right to move the said Courts in that regard would not be suspended. The question, therefore. in this case is whether the first respondent's liberty has been restricted in terms of the Defence of India Rules whereunder he was detained. If it was in contravention of the said Rules, he would have the right to approach the High Court under Art. 226 of the Constitution. In exercise of the Dower conferred on the Central Government by s. 3 of the Act, the Central Government made the Defence of India Rules. Under s. 30 of the Rules the Central

Government or the State Government, if it is satisfied with respect to any person that in order to prevent him from acting in any manner prejudicial to the matters mentioned therein, it is necessary so to do, may make an order directing that he be detained. Under subr. 4 thereof he shall be liable to be detained in such place and under such conditions as to maintenance, discipline and the punishment of the offence and the breaches of discipline as the Central Government or the State Government, as the case may be, may from time to time determine. In exercise of the power conferred under sub-r. (4) of r. 30 of the Rules, the Government of. Maharashtra determined that the conditions as to maintenance, discipline and the punishment of offenses and breaches of discipline governing persons ordered to be detained in any place in the State of Maharashtra, shall be the same as those contained in the Bombay Conditions of Detention Order, 1951. The Bombay Conditions of Detention Order, 1951, does not contain any condition as regards the writing of books by a detenu or sending them out of jail for publication. Briefly stated, the scheme of the said p. C. and I./65-2 provisions is that a person can be detained if the appropriate Government is satisfied that in order to prevent him from doing the prejudicial acts mentioned in r. 30 of the Rules it is necessary to detain him in prison subject to the conditions imposed in the manner prescribed in sub-r. (4) of r. 30 of the Rules. To put it in a negative form, no restrictions other than those prescribed under sub-r. (4) of r. 30 can be imposed on a detenu. If the appropriate authority seeks to impose on a detenu a restriction not so prescribed, the said authority will be interfering with the personal liberty of the detenu in derogation of the law whereunder he is detained. If that happens, the High Court, in terms of Art 226 of the Constitution, can issue an appropriate writ or direction to the authority concerned to act in accordance with law.

We have gone through the provisions of the Bombay Conditions of Detention Order, 195 1. There is no provision in that Order dealing with the writing or publication of books by a detenu. There is, therefore, no restriction on the detenu in respect of that activity. Sub-rule (iii) of r. 17 of the said Order reads "All letters to and from security prisoners shall be censored by the Commissioner or the Superintendent, a% the case may be. If in the opinion of the Commissioner or the Superintendent, the dispatch or delivery of any letter is likely to be detrimental to the public interest or safety or the discipline of the place of detention, he shall either withhold such letter, or despatch or deliver it after deleting any objectionable portion therefrom. In respect of the censoring of letters of security prisoners, the Commissioner or the Superintendent shall comply with any general or special instructions issued by Government."

The Maharashtra Government has not relied upon this rule. In deed, in the counter-affidavit its case was not that it prohibited the sending of the book for publication under the said sub-rule, but that it was not required by law to permit the detenu to publish books while in detention; nor was it its case before the High Court that the publication of this book was detrimental to public interest or safety or the discipline of the place of detention. Prima facie the said sub-rule applies only to letters to and from security priso- ners and does not regulate the sending out of prison books for publication. Indeed, the learned Additional Solicitor General does not rely upon this provision.

Let us now consider the validity of the argument of the learned Additional Solicitor General. He relies upon the following observations of Das, J., as he then was, in A. K. Gopalan's case(1), at p. 29 1.

"If a man's person is free, it is then and then only that he can exercise a variety of other auxiliary rights, that is to say, he can, within certain limits, speak what he likes, assemble where he likes, form any associations or unions, move about freely as his 'own inclination may direct,' reside and settle anywhere he likes and practise any profession or carry on any occupation, trade or business. These are attributes of the freedom of the per-son and are consequently attached to the person."' Relying upon these observations it is argued that freedom to publish is only a component part of that of speech and expression and that in the light of the said observations, as the detenu ceased' to be free in view of his detention, he cannot exercise his freedom to publish his book. In other words, as he is no longer a free man, his right to publish his book, which is only an attribute of personal liberty, is lost. The principle accepted by Das, J., as he then was, does not appear to be the basis of the conclusion arrived at by the other learned Judges who agreed with his conclusion. Different reasons are given by the learned Judges fro arriving at the same conclusion. As has been pointed out by this Court in the second Kochunni's case(2) the views of the learned Judges may be broadly summarized under the following heads : (1) to invoke Art. 19(1) of the Constitution, a law shall be made directly infringing that right; (2) Arts. 21 and 22 constitute a self-contained code; and (3) the freedoms in Art. 19 postulate a free man. Therefore, it cannot be said that the said principle was accepted by all the learned Judges who took part in A. K. Gopalan's case("). The apart, there are five distinct lines of thought in the matter of reconciling Art. 21 with Art. 19, namely, (1) if one loses his freedom by detention, he loses all the other attributes of freedom enshrined in Art. 19; (2) personal liberty in Art. 21 is the residue of personal liberty after excluding the attributes of that liberty embodied in Art. 19; (3) the personal liberty included in Art. 21 is wide enough to include some or all of the freedoms mentioned in Art. 19, but they are two distinct fundamental rights -a law to be valid shall not infringe both the rights; (4) the expression "law" in Art. 21 means a valid law and, therefore, even if a person's liberty is deprived by law of detention, the said law (1) [1950] S.C.R. 88.

(2) [1960] 3 S.C.R. 887.

shall not infringe Art. 19; and (5) Art. 21 applies to procedural law, whereas Art. 19 to substantive law relating to personal liberty. We do not propose to pursue the matter further or to express our opinion one way or other. We have only mentioned the said views to show that the view expressed by Das, J., as he then was, in A. K. Gopalan's case(1) is not the last word on the subject. In this case, as we have said earlier, we are only concerned with the question whether the restriction imposed on the personal liberty of the first respondent is in terms of the relevant provisions of the Defence of India Rules. Here, the first respondent's liberty is restricted under the Defence of India Rule's subject to conditions determined in the manner prescribed in Sub-r. (4) of r. 30 thereof. We find it difficult to accept the argument that the Bombay Conditions of Detention Order, 1951, which lays down the conditions regulating the restrictions on the liberty of a detenu, conferred only certain privileges on the detenu. If this argument were to be accepted, it would mean that the detenu could be starved to death, if there was no condition providing for giving food to the detenu. In the matter

of liberty of a subject such a construction shall not be given to the said rules and regulations, unless for compelling reasons. We, therefore, hold that the said conditions regulating the restrictions on the personal liberty of a detenu arc not privileges conferred on him, but are the conditions subject to which his liberty can be restricted. As there is no condition in the Bombay Conditions of Detention Order, 1951, prohibiting a detenu from writing a book or sending it for publication, the State of Maharashtra infringed the personal liberty of the first respondent in derogation of the law whereunder he is detained. The appellant, therefore, acted contrary to law in refusing to send the manuscript book of the detenu out of the jail to his wife for eventual publication.

In the view we have taken, another argument advanced by Mr. Garg, namely, that the restriction can only be imposed by an order made under s. 30 (f) or (h) of the Rules and that too in strict compliance with s. 44 of the Act need not be considered. That question may arise if and when an appropriate condition is imposed restricting the liberty of a detenu in the matter of sending his books for publication. We do not express our view on this question one way or other.

In the result, the order passed by the High Court is correct. The appeal fails and is dismissed. Appeal dismissed.

(1) [1950] S.C.R. 88.