Supreme Court of India
Additional Secretary To The ... vs Smt. Alka Subhash Gadia And Anr on 20 December, 1990
Equivalent citations: 1990 SCR, Supl. (3) 583 1992 SCC Supl. (1) 496
Author: P Sawant
Bench: Sawant, P.B.

PETITIONER:
ADDITIONAL SECRETARY TO THE GOVERNMENT OFINDIA AND ORS.

Vs.

RESPONDENT:

SMT. ALKA SUBHASH GADIA AND ANR.

DATE OF JUDGMENT20/12/1990 BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

AHMADI, A.M. (J) AGRAWAL, S.C. (J) CITATION:

1990 SCR Supl. (3) 583 1992 SCC Supl. (1) 496 JT 1991 (1) 549 1990 SCALE (2)1352 ACT:

Constitution of India, 1950: Articles 14, 19, 21 and 22--Liberty of a person--Deprival of--Whether permissible without apprising grounds of arrest--Whether State required to disclose facts in advance.

Articles 32 and 226--Jurisdictionary powers of judicial review-Whether Courts could refuse to exercise--Non-inter- ference with the termination order at pre-execution stage--Whether amounts to abandonment of power and denial to the proposed detenu remedy of judicial review and right to challenge the order.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: Section 3(1)--Detention order--Whether could be challenged before arrest of proposed detenu--Whether proposed detenu or somebody on his behalf entitled to the order prior to its execution at least to verify whether it could be challenged on limited grounds available--Whether the order and grounds to be served on the proposed detenu in advance.

HEADNOTE:

An order of detention passed against the first respond- ent's husband under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 could not be

served on the proposed detenu as he was absconding. Hence a declaration was made that he was a person who fell within the category mentioned in Section 2(b) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. Thereafter, a notice was issued to him under sub-section (1) of section 6 of the SAFEMA to show cause as to why the properties mentioned in the schedule to the notice should not be forfeited to the Central Government. A copy of the notice along with the schedule and the copy of the reasons for forfeiture was also sent to the first respondent.

The first respondent filed writ petition in the High Court challenging the detention order as well as the show cause notice. The High Court held that the writ petition was maintainable for challenging the detention order even though the detenu was not served with the order and had thus not surrendered to the authorities, that the detention order, the grounds of detention, and the documents relied upon for passing the detention order be furnished to the detenu, and to the counsel for the first respondent and that they should also be produced before the court.

A day before the matter was to come for directions an affidavit was filed on behalf of the appellants stating that under Article 22(5) of the Constitution the grounds of detention had to be given to the person when he was de- tained, and therefore, the detaining authority could not be compelled to furnish the documents to anybody else other than the detenu, after he was detained. However, the author- ity was willing to produce the documents for the perusal of the Court without showing them first to the first respond- ent. Finding that the appellants had not made any applica- tion for any extension in time to carry out the orders of the Court, nor made any statement expressing their difficul- ty to comply with the order, the High Court held that the officers were guilty of contempt of court, and directed the matter to be listed for taking appropriate action for con- tempt of court. At that stage, Special Leave Petitions were filed before this Court.

It was contended on behalf of the appellants that since the detention law was constitutionally valid, the order passed under it could be challenged only in accordance with the provisions of, and the procedure laid down, by it, and the High Court and this Court should not exercise their extraordinary jurisdiction in a manner which would enable a party to by-pass the machinery provided by the law, that unlike the order passed under other laws, the detention order if stayed or not allowed to be executed would be frustrated and the very object of the detention law would be defeated, and therefore, the detention order should in no case be allowed to be challenged before it was executed and the detenu was taken in custody; besides the detention jurisdiction being essentially a suspicion jurisdiction, the concept of complete justice was alien to detention law; the liberty guaranteed by Article 21 of the Constitution was subject to the provisions of Article 22 and, therefore, in a detention matter the provisions of the two Articles could not be separated; so long as the detention law was intra- vires the Constitution, and it stated that the detenu should be informed of the grounds of his detention only after he lost his liberty, the detenu could not by resort to Article 226, by-pass the provisions of that law or invite the High Court to do so and secure the grounds before submitting to the order; the detention law in question had not taken away the judicial review of the order passed under it, but only postponed it by implication and the Courts had done so by a self-regulat- ed procedure consistent with the object of the law; and the judicial review under the detention law had to be post- decisional, that the law by itself did not place any re- striction on the

writ-jurisdiction of the Court; and the restriction exercised by the Court was self-imposed and was not inconsistent with the basic structure of the Constitu- tion.

On behalf of the respondent it was contended, that Article 22 was an additional protection of liberty which was guaranteed by Articles 14, 19, and 21 of the Constitution; an individual had an absolute right to liberty and, there- fore, the burden was on the State to satisfy that the depri- vation of the liberty was necessary in the interests of the general public, security of the State, public order etc. before apprising him of the grounds of his arrest; and consequently, it must place all its cards before the Court before his arrest, particularly when he approached the Court making a grievance against the order; that the extent of the right to life and liberty under Article 21 of the Constitu- tion had been expanded by this Court to include not only the right to live but also the right to live with dignity, which was affected the moment the person lost his liberty before knowing the reasons for the same or having an opportunity to challenge them; a person could be deprived of his life and liberty only under a valid law which laid down a fair proce- dure for deprivation of the liberty of the individual; and the State could not be said to have adopted a fair procedure for arrest of a person when it refused to disclose the facts on the basis of which it proposed to arrest him; and that judicial review being a part of the basic structure of the Constitution the power of the High Court under Article 226 of the Constitution could not be circumscribed in any way by any law, including detention law; and as such it could be challenged at any stage, and the artificial distinction between pre-decisional and post-decisional challenge was inconsistent with and alien to, the wide powers conferred under Articles 32 and 226 of the Constitution, and that this Court had in fact, interfered with the detention orders before the detenus had submitted to them.

Allowing the appeals, this Court, HELD: 1.1. It is well settled that the fundamental rights under Chapter III of the Constitution are to be read as a part of an integrated scheme. They are not exclusive of each other but operate, and are, subject to each other. The action complained of must satisfy the tests of all the said rights so far as they are applicable to individual cases. In particular, Article 22(5) is not the sole repository of the detenu's rights. His rights are also governed by the other fundamental rights, particularly those enshrined in Articles 14, 19, and 21. Hence, while examining action resulting in the deprivation of the liberty of any person, the limita- tions on such action imposed by the other fundamental rights, where and to the extent applicable have to be borne in mind. [592F-G, 593B] Rustom Cavasjee Cooper v. Union of India, [1970] 3 SCR 530 and Maneka Gandhi v. Union of India, [1978] 2 SCR 621, relied on.

1.2 While Article 21 permits the State to deprive a person of his life or personal liberty, provided it is done strictly according to procedure established by law, this permission is expressly controlled by Article 22 in cases both of punitive and preventive detention. By law or proce- dure is, of course, meant validly enacted law or procedure. Thus, the provisions of Articles 21 and 22 read together, make it clear that a person can be deprived of his life or personal liberty according to procedure established by law, and if the law made for the purpose is valid, the person who is deprived of his life or liberty has to challenge his arrest or detention, as the case may be, according to the provisions of the law under which he is arrested or de- tained. [593C-D, 594D] 1.3 Therefore, in the face of the clear provisions of the Constitution and of the valid Act, it is not open to contend that the provisions of Articles 14, 19 and 21 of the Constitution prevent a person being deprived of his liberty without

first apprising him of the grounds of his arrest, and that since the State has all the facts in its possession which require the arrest and detention of the person, it must first disclose the said facts before depriving him of his liberty. The provisions of Article 22 of the Constitu- tion and of the Act made thereunder permit the State to arrest and detain a person without first disclosing the grounds, even though they are in its possession before or at the time of his arrest. [608F-G] 1.4 However vital and sacred the liberty of the individ- ual, the responsible framers of the Constitution, although fully conscious of its implications, have made a provision for making a law which may deprive an individual of his liberty without first disclosing to him the grounds of such deprivation. [609D] 2.1 Denial of the right to the proposed detenu to chal- lenge the detention order and the grounds on which it is made before he is taken in custody does not amount to denial of remedy of judicial review of the order because there is a difference between the existence of power and its exercise. [609E-F] 2.2 Neither the Constitution, including the provisions of Article 22 thereof, nor the COFEPOSA place any restric- tion on the powers of the High Court and this Court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, and are untrammeled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the Courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the inter- ests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. [609G-H, 610A] 2.3 It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the Courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. If in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. The courts have the necessary power to entertain grievances against any detention order prior to its execution, and they have used it in proper cases, al- though such cases have been few and the grounds on which the courts have interfered with them are necessarily very limit- ed in scope and number, viz., where the courts are prima facie satisfied (i) that the order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person,

(iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law. It is always open for the detenu or anyone on his behalf to challenge the detention order by way of habeas corpus petition on any ground available to him. [610A-H] 2.4 The judicial review of the detention order is always available. This applies also to the cases under other laws. But in a detention case, the stage at which the judicial review is made by the Court only stands deferred till after the order is

executed. A ground on which a detention order is challenged which requires investigation and cannot be adjudicated without hearing the other side and without proper material, has necessarily to await decision till the final hearing. In such cases the operation of the order of detention by its very nature cannot be stayed pending the final outcome. The only proper course in such cases is to hear the petition as expeditiously as possible. [611A-B]

3. The detenu is not entitled to the order of detention prior to its execution even to verify whether it can be challenged at its preexecution stage on the limited grounds available, for the reasons that (1) the Constitution and valid law made thereunder do not make any provision for the same. On the other hand, they permit the arrest and deten- tion of a person without furnishing to the detenu the order and the grounds thereof in advance, (2) when the order and the grounds are served and the detenu is in a position to make out prima facie the limited grounds on which they can be successfully challenged, the courts, have power even to grant bail to the detenu pending the final hearing of his petition. Alternatively, the Court can and does hear such petition expeditiously to give the necessary relief to the detenu. (3) In the rare cases where the detenu before being served with them learns of the detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above, though the Court, even in such cases, is not obliged to interfere with the order at that stage and may insist that the detenu should first submit to it. It will, however, depend on the facts of each case. Thus, the courts have power to interfere with the detention orders even at the pre-execution stage but they are not obliged to do so nor will it be proper for them to do so save in exceptional cases. Much less can a detenu claim such exercise of power as a matter of right. The discretion is of the Court and it has to be exercised judicially on well-settled principles. [611C-H] In the instant case, the proposed detenu is absconding and had been evading the service of the detention order. The first respondent who is his wife has sought to challenge the said order because the show-cause notice under sub-section (1) of Section 6 of the SAFEMA was issued to him, a copy of which is also sent to her. Thus, the assistance of the High Court under Article 226 of the Constitution is sought by the first respondent on behalf of the detenu to secure the detention order with a view to defend the proceedings under the SAFEMA. In other words, the proposed detenu is trying to secure the detention order indirectly without submitting to it. Moreover, he is also trying to secure the grounds of detention as well as the documents supporting them which he cannot get unless he submits to the order of detention. No prima facie case is made out for challenging the detention order, which would impel the Court to inter- fere with it at this pre-execution stage. The High Court, disregarding the law on the subject and the longsettled principles on which alone it can interfere with the deten- tion order at pre-execution stage, has directed the authori- ties not only to furnish to the detenu the order of deten- tion but also the grounds of detention and the documents relied upon for passing the detention order. [612B-E] In the circumstances, both the orders of the High Court directing the appellants to furnish to the detenu or to the first respondent or her counsel the order of detention, the grounds of detention and the documents supporting them as well as the contempt notice are clearly illegal and unjusti- fied and they are accordingly quashed. [613E-F] Special Reference No. 1 of 1964 [1965] 1 SCR 492; Dwar- kanath, Hindu Undivided Family v. Income-Tax Officer, Special Circle, Kanpur & Anr., [1965] 3 SCR 536; State of Bihar v. Rambalak Singh "Balak" & Ors., AIR 1966 SC 1441; Khudiram Das v. The State of West Bengal & Ors., [1975] 2 SCR 832 at 842; Francis Coralie

Muffin v. Administrator, Union Territory of Delhi & Ors., [1981] SCC 608; Smt. Poonam Lata v. M.L. Wadhwan & Ors., [1987] 11 SCR 1123 and S.M.D. Kiran Pasha v. The Government of Andhra Pradesh & Ors., JT (1989) 4 SC 366, referred to.

Minerva Mills Ltd. v. Union of India & Ors., [1981] 1 SCR 206; S.P. Sampath Kumar v. Union of India & Ors., [1987] 1 SCC 124 and P. Sambamurthy & Ors. v. State of Andhra Pradesh & Anr., [1987] 1 SCC 362, referred to. Jayantilal Bhagwandas Shah etc. v. State of Maharashtra, [1981] 1 Cr. LJ 767; Abdul Aziz Mohammad v. Union of India, [1984] Cr. LJ 1307; Omar Ahmed Ebrahim Noormani v. Union of India & Ors., [1984] Cr. LJ. 1915; Yogesh Shantilal Choksi v. Home Secretary, Government of Kerala & Anr.. [1983] Cr. LJ 393 and Simmi v. State of U.P. & Ors., [1985] All. LJ 598, referred to.

JUDGMENT: