

Hem Lal Bhandari vs State Of Sikkim And Others 1987 AIR 762

FACTS

The petitioner is Hem Lal Bhandari. The respondents are the State of Sikkim through its Home Secretary, the Delhi Administration, Police Department and the Union of India through the Home Secretary. It is alleged that the Chief Minister of Sikkim wanted the petitioner to join politics and that he incurred the wrath of the Chief Minister because of his disinclination to accept this suggestion and that the order of detention was passed against him consequently.

On 29.9.1986, at 10.15 P.M. three officers of the Sikkim Police Service accompanied by two officers of the Bombay Police went to the residence of the petitioner and took him to the office of the C.I.D., Bombay where he was served with a copy of the detention order. He was detained in the police lock-up at the C.I.D. office and his request to contact a lawyer was not granted. He was permitted to go to his office to collect some papers. There he contacted Shri T.R. Andhyarujina, Senior Counsel and informed him that he was being taken to the Bombay Airport to be flown by flight IC-183, to Delhi. The Senior Counsel requested the police officers to permit him to approach the Bombay High Court before taking the petitioner to Delhi. This request was not granted. However, he filed a habeas corpus petition for the release of the petitioner in the Bombay High Court which stayed the order of detention. This order could not be served on the detaining officer. The advocate at Delhi was informed of the High court order by the counsel for the petitioner but there was no action to prevent his detention. Therefore, a petition was filed before this Court on 1st October, 1986 on which this Court passed an order directing that the petitioner be detained in Delhi and should not be removed from Delhi by the respondents and further that he should be produced before the Chief Metropolitan Magistrate who might release him on bail if he thought it fit. On-2-10-1986, the petitioner was brought before the Chief Metropolitan Magistrate who after hearing the parties granted bail to the petitioner. The petitioner was released the same evening at 4.30 P.M. on furnishing a bond of a sum of Rs. 10,000 with a surety in the like sum. The petitioner returned to Bombay the next day, No serious attempt was made by them between-2-10-1986, and 14-10-1986 to serve the petitioner with the grounds of detention. On 6th October, 1986, the petitioner attended the Bombay High Court in connection with the writ petition filed there and has been regularly attending his office and carrying on his professional duties both in the office and in the High Court. On 14-10-1986, the petitioner was served with the impugned order of detention, the grounds of detention and the supporting documents. The case put forward by the petitioner's counsel is that the delay caused in serving the grounds of detention, from-2-10-1986 to 14-10-1986, clearly violates Section 8(1) of the Act and on that ground the order of detention has to be quashed.

PROVISIONS

1. Sec 8(1) of the act

When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention, communicate to him the grounds on which

the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

ISSUES

Whether sec 8(1) of the National Security Act has been violated?

RATIO AND RATIONALE

The court held that the order of detention is bad and quashed it.

The Section shows that it is obligatory on the detaining officer to communicate to the detenu, the grounds on which the order of detention has been made, promptly. This has to be done as soon as possible and ordinarily not later than 5 days. The detaining authority is permitted to exceed this limitation of 5 days in exceptional circumstances. The grounds of detention, under exceptional circumstances, can be communicated to the detenu within a period not later than 15 days from the date of detention but when the detaining authority takes time longer than 5 days he was to record reasons why the grounds of detention could not be communicated within 5 days. It is clear in this case that the grounds of detention were communicated to the petitioner long after 10 days. There is no record evidencing any reason for this long delay. An attempt was made by the counsel for the respondents to contend that the delay in communicating the grounds of detention caused in this case has to be condoned and the rigour of the Section relaxed since the detenu had been released on 2-10-1986, and hence not in detention. This according to us is a specious plea that cannot stand legal scrutiny. If this contention is to be extended to its logical conclusion it would be clothing the authorities with powers to delay communication of the ground of detention indefinitely, whenever a detenu secures from a Court of law either bail or parole. To accept this contention would be to destroy the effect of the mandate of the Section. As indicated earlier, the mandate enacted in the Section is a safety valve for a citizen who is robbed of his liberty and to disable the authorities from manipulating the grounds of detention. The Section has to be interpreted literally. No relaxation is permissible. If the original time of 5 days has to be extended, such extension must 'be supported by an order recording reasons. If reasons are not so corded the order of detention will automatically fail. Even if reasons are recorded they have to inspire confidence in the Court and are subject to legal scrutiny. If the reasons are unsatisfactory, Courts would still quash the order of detention. This case did not evince any reasons why the detention order was given and hence the petitioner entitled to release from detention.