

A THE STATE OF RAJASTHAN AND ANR.

v.

TALIB KHAN AND ORS. ETC.

OCTOBER 24, 1996

B [K. RAMASWAMY, SUJATA V. MANOHAR AND
G.B. PATTANAIK, JJ.]

National Security Act, 1980 :

C Sections 3, 8—Detention—Non-supply of exceptional circumstances and reasons recorded for non-supply of grounds of detention before the expiry of five days but within the outer limit of ten days—Whether vitiates the order of detention—Held : No—High Court not justified in law in holding that non-communication of the ground of exceptional circumstances as reasons recorded by the Magistrate, vitiated the order of detention—Constitution of
D India—Art. 22(5).

A.K. Roy v. Union of India & Ors., [1982] 1 SCC 271 = [1983] 1 SCR 540, followed.

E *Ibrahim Ahmad Batti v. State of Gujarat & Ors.*, [1983] 1 SCR 540 = [1982] 3 SCC 440, overruled.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 419-31 of 1987 Etc.

F From the Judgment and Order dated 9.6.87 of the Rajasthan High Court in D.B.C. Habeas Corpus P. Nos. 831, 909, 919, 920-25, 966, 1030, 1037 and 1177 of 1987.

K.S. Bhati for the Appellants.

G Sushil Kumar Jain, A.P. Dhamija, Surya Kant and M.K. Singh for the Respondents.

The following Order of the Court was delivered :

H Pursuant to the order of this Court dated August 21, 1987 doubting the correctness of *Ibrahim Ahmad Batti v. State of Gujarat & Ors.*, [1983] 1 SCR 540 = [1982] 3 SCC 440, the case has been referred to this Bench.

These appeals by special leave arise from the Division Bench judgment of the High Court of Rajasthan at Jodhpur in Writ Petition Nos. 831/87 and batch.

The facts are that the respondents were detained under Section 3(1) of the National Security Act, 1980 (for short, the 'Act'), by proceedings of the District Magistrate, Jaisalmer dated January 7, 1987. The exceptional circumstances were recorded on January 11, 1987 for non-supply of the grounds and documents to the detenu. The grounds of detention with the material were supplied on January 16, 1987. The detenu made his representation on January 20, 1987 to the State Government which was rejected on February 2, 1987. He made a representation to the Advisory Board on February 9, 1987 and it was considered and rejected on February 19, 1987. The State Government confirmed the order of detention on March 13, 1987 for a period of one year w.e.f. January 7, 1987. When the orders of detention were challenged, primarily on the ground that the exceptional circumstances and the reasons recorded by the District Magistrate were not communicated to the detenu, the order of detention was held violative of Article 22(5) and the High Court by the impugned order dated June 9, 1987 enlarged the respondents from detention. It is not necessary to go into the other grounds since the reference is on the correctness of the view taken by a Bench of two Judges of this Court in *Batti's* case.

It is contended by Shri K.S. Bhati, Advocate on behalf of the appellant, that after thorough preparation and analysis of facts, the view taken by the High Court and this Court in *Batti's* case is not correct in law. The objects and reasons of the Act disclose the gravity under which detention could be resorted to. Section 3 and Section 8 of the Act are to be read together. The detaining authority, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order or of supplies and services essential to the community, it is necessary so to do, may pass an order directing that he be detained. In case the order is not communicated to the detenu within five days as envisaged in Section 8(1), the detaining authority is required to record reasons for and the exceptional circumstances under which order could not be communicated to the detenu, and to serve the grounds of detention within 10 days from the date of the order of detention. In this case reasons have been recorded. It is not a condition that exceptional circumstances or reasons need be

A supplied to the detenu along with the grounds of detention. The view taken in *Batti's* case is not correct in law. It is contended by the learned counsel for the respondents, Shri Sushil Kumar Jain, that the view of this Court in *Batti's* case followed by that of the High Court is correct in law for the reasons that under Article 22(5) of the Constitution, the detenu is entitled to be supplied with, as soon as may be, the grounds of detention, with a view to make representation against his deprivation of liberty at the earliest opportunity. Unless the reasons and the exceptional circumstances for non-supply of the order of detention are communicated to the detenu along with the grounds of detention; the detenu would be prevented to make effective representation either to the appropriate Government or to the Advisory Board or the court. Therefore, the communication of exceptional circumstances or reasons recorded along with the grounds of detention, is a pre-condition. Non-compliance thereof tantamounts to violation of Article 22(5) of the Constitution. The view, therefore, is correct in law.

D In view of the diverse contentions, the question that arises for consideration is : whether the view expressed by this Court in *Batti's* case is correct in law? The Act was enacted for various reasons, viz., the prevailing situation of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues; it was considered necessary that the law and order situation in the country needed to be tackled in a most determined and effective way. The anti-social and anti-national elements including secessionists, communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community, pose a grave challenge to the lawful authority and sometimes even hold the society to ransom. Therefore, in view of the complexity and nature of the problems, it was felt that the defence, security, public order and maintenance of essential supplies or services to the community require to be maintained, with a view to streamline the administration in a determined way and to provide the teeth to effectively handle the nagging aforesaid situation and to deal with such situations, the Act was enacted. Section 3 is pivotal provision under which the authority has been given to the State to exercise such a power. If the Central or State Government is satisfied with respect to any person that 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 if it is satisfied with respect to any person that with a view to preventing

him from acting in any manner prejudicial to the security of the State or
 from acting in any manner prejudicial to the maintenance of public order
 or from acting in any manner prejudicial to maintenance of supplies and
 services essential to the community, it is necessary so to do, it may make
 an order directing that such person be detained. In certain circumstances,
 the liberty of the person gets restrained subject to the protection given to
 him under the Act. The grounds of detention and the material in support
 thereof, unless the later touches the sensitive and confidential
 evidence/material, must be supplied to him, as early as possible, ordinarily
 within 5 days from the date of detention so as to enable him to make a
 representation to the appropriate Government etc. What is mandated by
 Article 22(5) is that the detenu must be supplied with the grounds of
 detention and material without undue delay. Power has been given to the
 State to delegate such a power to the District Magistrate or the Commis-
 sioner of Police under sub-Section (3) thereof. In this case, the District
 Magistrate, Jaisalmer had delegated that power under sub-section (3) of
 Section 3 of the Act and exercised his subjective satisfaction and passed
 the detention orders under Section 3(2). After the detention order has
 been made, it is mandatory under Section 8(1) of the Act to supply the
 grounds of detention to the person affected by the order. Sub-section (1)
 reads as under :

"(1) 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 ten 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."

A reading thereof would, therefore, manifest that when a person is
 detained in pursuance of his 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 ten days from the date of the 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 ap-
 propriate Government. Section 8(1) circumscribes the range and amplitude

A of the phrase "earliest opportunity to supply the grounds of detention" and sweep of the phrase "as soon as possible", i.e., ordinarily within five days and in exceptional circumstances within 10 days. It would thus be seen that the detenu is entitled to be supplied with the grounds on which the order of detention has been made and shall, with a view to afford him an earliest opportunity of making a representation against the order to the appropriate Government, the grounds of detention be supplied ordinarily within that prescribed period. The period during which the grounds of detention are to be supplied has also been indicated. The grounds shall be communicated, as soon as may be, i.e., ordinarily not later than five days. In other words, the five days limit has been prescribed by the statute to supply the grounds of detention to the detenu. If due to administrative exigencies of exceptional circumstances, the detaining authority could not communicate the grounds, it should record reasons for non-supply of the grounds within five days as envisaged in the first part. As to what are the exceptional circumstances due to which the grounds of detention could not be supplied within five days but was done within 10 days from the date of detention is always a question of fact. In *A.K. Roy v. Union of India & Ors.*, [1982] 1 SCC 271 = [1983] 1 SCR 540, the Constitution Bench of this Court was required to consider the constitutionality of Section 8(1). In that behalf, this Court had held that :

E "The objection of the petitioners against the provisions contained in Section 8(1) is that it unreasonably allows the detaining authority to furnish the grounds of detention to the detenu as late as five days and in exceptional cases ten days after the date of detention. This argument overlooks that the primary requirement of Section 8(1) is that the authority making the order of detention shall communicate the grounds of detention to the detenu "as soon as may be". The normal rule, therefore, is that the grounds of detention must be communicated to the detenu without avoidable delay. It is only in order to meet the practical exigencies of administrative affairs that the detaining authority is permitted to communicate the grounds of detention not later than five days ordinarily, and not later than ten days if there are exceptional circumstances. If there are any such circumstances, the detaining authority is required by Section 8(1) to record its reasons in writing. We do not think that this provision is open to any objection."

It would thus be seen that the requirement of the supply of the grounds, as soon as may be, indicates that normally the detenu is entitled to be communicated with the grounds of detention within five days. With a view tide over unavoidable circumstances due to which the detaining authority could not have the grounds of detention supplied, the statute engrafted a leverage and directed him to record reasons therefor in writing and the administration should supply the grounds of detention, before the expiry of ten days. So, the delay should be exceptional and those exceptional circumstances are required to be recorded in writing. What are exceptional circumstances is always a question of fact in each case. What is mandatory is the supply of the grounds of detention before expiry of ten days *but after the expiry of five days*. It is well settled legal position that the phrase "as soon as may be" means within a reasonable dispatch when there is no avoidable delay. What is avoidable delay is always a question of fact.

The question is: whether the non-supply of the exceptional circumstances and the reasons recorded for non-supply of the grounds of detention before the expiry of five days but within the outer limit of ten days, along with the grounds of detention, vitiates the order of detention? The Division Bench has taken the view that detenu has a valuable right of representation against the order of detention to the appropriate Government or to the Advisory Board. Unless the exceptional circumstances and the reasons for non-supply of the grounds of detention and the documents in support thereof are communicated to the detenu, by necessary implication, the valuable right of representation at the earliest opportunity, as envisaged under Article 22(5), is breached. Thereby, the detenu becomes entitled to be released from detention. It could be seen that what is material and mandatory is the communication of the grounds of detention to the detenu together with documents in support of subjective satisfaction reached by the detaining authority. When the representation has been made by the detenu to the appropriate Government or to the Advisory Board, it may be one of the grounds for him to impugn the order of detention that he was not supplied with the grounds within the time prescribed and thereby he was unjustifiably detained, without any reasonable justification. When such a ground has been raised and pressed for consideration, it would be for the detaining authority to satisfy the appropriate Government or Advisory Board or in an appropriate case in the proceedings under Article 226 of the Constitution. The exceptional circumstances are those due under which the grounds and the documents

A could not be supplied to the detenu and that the same were recorded in writing in the record of the detaining authority. If the appropriate Government or the Advisory Board or the Court are not satisfied with the recorded exceptional circumstances due to which the grounds of detention could not be supplied, after five days but before the expiry of 10 days, that

B may be one of the circumstances which the appropriate Government or Advisory Board or the Court may consider whether the detention order is vitiated or is an infraction of Article 22(5) of the Constitution. But since the Act does not envisage communication of the exceptional circumstances and the reasons recorded for non-supply of the grounds that ground of non-communication or their non-supply by itself is not sufficient to hold

C that the order of detention is in violation of Article 22(5) of the Constitution. The Division Bench, therefore, was not right in concluding that the detenu has been deprived of his making a representation at the earliest opportunity for non-supply of the grounds of exceptional circumstances and the reasons recorded for non-supply of the grounds of detention. Thus,

D we hold that the view taken in *Batti's* case is not correct in law. The District Magistrate in his proceedings dated January 11, 1987 has recorded as under :

E "Officer-in-charge (judicial) has informed that in the cases so far 2/3rd Photostat copies have been prepared and in the absence of copies, it is not possible to furnish the grounds of detention to the detenu before the expiry of prescribed minimum period of five days. Since in all 35 cases, about 16,000 Photostat copies are to be prepared and the sets are also to be prepared. But due to frequent power failure, fluctuation; machine being the private, its owner cannot be compelled to sit and work for extra-time, difficulty is

F being faced in completing the work. Therefore using the maximum period of 10 days for furnishing the grounds of detention to the detenu, as provided under Section 8(1) of the National Security Act, 1980, the State Government was informed of this decision."

G In view of the grounds mentioned therein, we are of the view that the District Magistrate was prevented due to those exceptional circumstances as recorded in the proceedings that the grounds of detention and the documents in support thereof could not be supplied to the detenu within five days but the same came to be supplied within ten days, as envisaged

H in Section 8(1) of the Act. Therefore, the High Court was not justified in

law to hold that non-communication of the ground of exceptional circumstances as reasons recorded by the District Magistrate, vitiate the order of detention. Since the time for detention of one year has expired by efflux of time, we do not propose to interfere with the order. A

The appeals are accordingly allowed.

G.N.

Appeals allowed. B