

GNANAMUTTU
v.
MILITARY OFFICER ANANDA AND OTHERS

SUPREME COURT
G. P. S. DE SILVA, CJ.,
WIJETUNGA, J. AND
BANDARANAYAKE, J.
S.C. APPLICATION NO. 152/98
MARCH 15, 1999

Fundamental rights – Investigation of terrorist activity – Arrest on the ground of failure to possess a "Police Registration Form" – Articles 12 (1) and 13 (1) of the Constitution.

The petitioner a Civil Engineer by profession was a passenger in a bus proceeding to Borella. The bus was stopped at an Army check-point at Stanley Wijesundera Mawatha around 8.15 am on 13.02.98. When the identity of the passengers was checked the petitioner produced his National Identity Card, Driving Licence and a Student Identity Card issued to him by the Bandaranaike Centre for International Studies. Notwithstanding, such proof of identity the petitioner was detained by the 1st respondent for not possessing a "Police Registration Form", while the rest of the passengers were released. Around 9.30 am "two men in civils" arrived in a police jeep and took the petitioner to the Cinnamon Gardens Police Station where he was kept in a room. The petitioner was finger-printed and produced before the Magistrate's Court, Hulftsdorp, around 4 pm on a "B" Report which stated that he was suspected of "terrorist activities". On 20.2.98, he was discharged by the Magistrate.

Held:

The documents produced by the petitioner were more than sufficient to ascertain his identity. There was no basis for the 1st respondent to have detained the petitioner, and no basis for the 2nd respondent to have produced him before the Magistrate's Court on a "B" Report. The petitioner's rights under Articles 12 (1) and 13 (1) of the Constitution were infringed by such action.

APPLICATION for relief for infringement of fundamental rights.

Dr. Jayantha de Almeida Gunaratne with Elmore Perera, Kishali Pinto Jayawardene and Kamal Nissanka for petitioner.

Harsha Fernando SC for respondents.

May 5, 1999.

SHIRANI A. BANDARANAYAKE, J.

The petitioner is 42 years and a Civil Engineer by profession. He has been resident in and around Colombo for the last 29 years and since 1987 he has been residing at No. 66, St. Mary's Road, Mount Lavinia. According to the petitioner, on 13.02.1998, he left his residence around 7.00 am to proceed to his work place at Rajagiriya. After attending to a money transaction at the Automatic Teller Machine, Standard Chartered Bank at Bambalapitiya (P4) he had boarded a No.154 bus from the Bullers Road bus halt intending "to transfer to a Rajagiriya bound bus from Borella Junction". While the bus was proceeding to Borella, it was stopped at an Army checkpoint at Stanley Wijesundera Mawatha around 8.15 am and "the passengers were asked to disembark". The petitioner had produced his identity card, his driving licence and a student identity card issued to him by the Bandaranaike Centre for International Studies (P5). The 1st respondent after checking these documents had asked the petitioner to produce his "Police Registration Form". He had told the 1st respondent that "there was no legal requirement to possess such a form" (P6). The 1st respondent had then addressed the petitioner rudely and had queried as to whether the form in question is so heavy that it cannot be carried on his person. Thereafter, the petitioner was detained while the rest of the passengers were released. The petitioner was kept standing on the road near the Army check-point in full view of the public and "suffering considerable humiliation in the process". A police jeep arrived around 9.30 am with "two men in civils" and the petitioner was taken to the Police Station, Cinnamon Gardens. At the Police Station, the petitioner was interrogated by the 3rd respondent. After a while his identification documents together with his diary and his money were taken from him and he was put inside a cell. Around 12.30 pm the petitioner was taken to the Police Station, Bambalapitiya, in order to be photographed. He was kept in a room at the Police Station and after about two and a half hours he was informed that the required photographs cannot be taken as the police photographer had not turned up. At this point the petitioner was informed that as there was a transport problem he would have to walk upto the Galle Road. He was waiting there with a policeman "in civils", when the petitioner noticed a colleague of his and a member of the Institute of Engineers walking along the Galle Road. The petitioner had apprised him of the situation and he had given him a telephone card with which

the petitioner had informed a fellow-worker in his office that he has been arrested. After making the telephone call he had discovered that the policeman who was with him was not there and he had found out that he had gone to the Police Station, Cinnamon Gardens. The petitioner had no money with him as all his belongings were taken by the Police. As there was no other option, the petitioner had proceeded on foot to the Police Station, Cinnamon Gardens. He reached the Police Station around 4.00 pm Thereafter, the petitioner was told that he had to be finger-printed and following which, all his belongings, *except the National Identity Card was returned to him.* He was then taken to the Magistrate's Court, Hulftsdorp, where an Attorney-at-law had said that he would appear for the petitioner and *had demanded Rs.1,500 for the said purpose.* To the surprise of the petitioner he had found *his National Identity Card, which was handed over to the Police that morning, in the possession of the said Attorney-at-law.* The petitioner had refused this offer saying that he did not have any money with him. Then the Attorney-at-law had become hostile. The Magistrate had directed that the petitioner could sign a personal bond and reappear in Court on 20.02.1998 (P7). He was discharged by the Magistrate when he appeared on 20.02.1998 (P7).

The petitioner submitted that there was no basis for the 1st respondent to arrest him and for the 3rd respondent acting under the authority of the 2nd respondent to detain him. He was never informed of the charges against him. The petitioner alleges that his arrest was arbitrary, unreasonable, unlawful and illegal and was in violation of his fundamental rights guaranteed under Articles 12 (1), 13 (1) and 13 (2) of the Constitution.

This Court granted leave to proceed in respect of the alleged violation of Articles 12 (1) and 13 (1) of the Constitution.

The 2nd respondent had averred that on 13.02.1998, around 9.15 am the 1st respondent, who was on duty at the road block at Stanley Wijesundera Mawatha had handed over the petitioner to one PC Jayasinghe, who was on duty, on suspicion that the petitioner may be connected to or involved in terrorist activities. On the instructions given by the 2nd respondent, the officer on duty has telephoned the National Information Bureau and the Security Co-ordination Unit and given the particulars of the petitioner in order to ascertain whether there were any reports, evidence or other facts suggesting and/or

linking the petitioner to any terrorist related activities. The 2nd respondent averred that around 9.45 am with the consent of the petitioner, a detailed statement was recorded. According to him, the petitioner was produced before the Magistrate on a B report bearing No. B 6591/1, in the Magistrate's Court in Hulftsdorp at 10.45 am on 13.02.1998.

The 1st respondent had made a statement at the Police Station, Cinnamon Gardens, on 13.02.1998 at 9.15 am (2R1). He had stated that the officers on duty at the check-point on Stanley Wijesundera Mawatha, had taken the petitioner into custody as he did not have a "Police Registration Form".

The 2nd respondent in paragraph 9 of his affidavit has averred that:

" . . . at the point of accepting the petitioner into custody from the 1st respondent, PC Jayasinghe has recorded that the petitioner has been arrested by the 1st respondent for not possessing, a police report and that the 1st respondent has handed over the petitioner to police custody to (*sic*) further inquiry."

It is thus common ground that the petitioner was arrested as he did not possess the "Police Registration Form". Learned State Counsel rightly conceded that an arrest cannot be made on the basis that the petitioner did not possess a "Police Registration Form". His position was that the police should have released him immediately. However, the police had acted differently. B Report No. B 6591/1 (2R7) stated that the petitioner was produced before the Magistrate as he was suspected of "terrorist activities". The 2nd respondent had further stated in the said B Report that he was conducting inquiries to find out whether the petitioner is involved in such activities. He, therefore, moved that the petitioner be remanded until 20.02.1998.

It is conceded that the petitioner was arrested by the 1st respondent at a security check-point on Stanley Wijesundera Mawatha. At that time the petitioner was on his way to his place of work. The petitioner, along with the rest of the passengers in the bus, had produced his Identity Card, as proof of his identity at the check-point. The petitioner had also produced his Driving Licence and a Student Identity Card issued by the Bandaranaike Centre for International Studies (P5).

If the purpose at the security check-point was to ascertain the identity of the person travelling in that bus, these documents in my view, were more than sufficient.

Learned State Counsel for the 2nd to 4th respondents, submitted that the Magistrate should have noticed the lapse on the part of the 2nd respondent and should have released the petitioner forthwith without making an order for the petitioner to sign a personal bond and to appear in Courts on 20.02.1998. I find it difficult to agree with this submission. The Magistrate made his Order on the basis of the B Report submitted by the 2nd respondent. As mentioned earlier, the B Report stated that the petitioner was produced before the Magistrate as he was suspected of terrorist activities. The Magistrate had to act according to the documents produced before him. In such a situation I do not think the Magistrate had acted unfairly or unreasonably.

According to the submissions made by the petitioner, he was produced before the Magistrate only around 4.00 pm. The 2nd respondent, however, averred that the petitioner was produced before the Magistrate around 10.45 am (paragraph 6 (e) of the 2nd respondent's affidavit). The IB extracts show that the petitioner was taken to Court at 10.45 am on 13.02.1998 (2R6). That officer, however, had returned to the Police Station only at 7.02 pm (2R6 A). On the material placed before us, the version given by the petitioner is more acceptable.

On a consideration of the totality of the material placed before us, I hold that the 2nd respondent has violated the petitioner's fundamental rights guaranteed under Articles 12 (1) and 13 (1) of the Constitution. There was no basis for the 1st respondent to have detained the petitioner. The 2nd respondent, as the officer-in-charge of the Police Station, should have released the petitioner immediately. There was no basis at all for the 2nd respondent to have caused the petitioner to be produced before the Magistrate's Court on a B Report.

I, accordingly, hold that the petitioner is entitled to a sum of Rs. 50,000 as compensation and costs, out of which Rs. 42,500 must be paid by the State and Rs. 7,500 personally by the 2nd respondent. These amounts must be paid within three (3) months from today.

The Registrar of the Supreme Court is directed to send a copy of this judgment to the Inspector-General of Police.

G. P. S. DE SILVA, CJ. – I agree.

WIJETUNGA, J. – I agree.

Relief granted.
