

NALLANAYAGAM
v.
GUNATILAKE AND OTHERS

SUPREME COURT.
WANASUNDERA, J., COLIN-THOMÉ, J. AND ATUKORALE, J.
S. C. APPLICATION No. 59/85.
JULY 24 AND 25, 1985.

Fundamental Rights—Articles 13(1), 13(2) and 13(4) of the Constitution—Spreading false rumours and statements—Regulations 19(1) and 19(2) of the Emergency Regulations—Warrant of detention.

The complaint was that the petitioner was taken into Police custody on 22.5.85 and was produced before the Magistrate, Colombo Fort on 25.6.1985—three days later than the 30 days after his arrest allowed by the proviso to Regulation 19(1). On 23.5.1985 the I.G.P. acting under Regulation 19(2) authorised the officer-in-charge, Police Station, Slave Island to detain the petitioner who had committed offences in contravention of Regulation 26.

Held—

The fundamental right referred to in Article 13(2) of the Constitution has to be read with the proviso to regulation 19(1) of the Emergency Regulations. As the petitioner was produced three days after the specified period, the belated production of the petitioner was a violation of Article 13(2) of the Constitution.

Per Colin-Thomé, J.:

“Article 13(2) embodies a salutary principle safeguarding the life and liberty of the subject and must be exactly complied with by the executive.”

Cases referred to:

- (1) *Edirisuriya v. Navaratnam*—[1985] 1 Sri LR 100, 118.
- (2) *Yasapalitha Nanayakkara v. Henry Perera and Others*—S. C. Application No. 19/85—S.C. minutes of 9.8.85.

APPLICATION for infringement of Fundamental Rights.

Nimal Senanayake, P.C. with Kithsiri Gunaratne, Desmond Fernando, A. B. Dissanayake, Sanath Jayatileke and A. D. Telespha for petitioner.

Sunil de Silva, Addl. S.G. with Rohan Jayatileke, S.S.C., K. Dharmawardene, S.C. and Nihara Rodrigo, S.C. for respondents.

Cur. adv. vult.

November 22, 1985.

COLIN-THOMÉ J.

The petitioner filed this application on the 11th June 1985, under Article 126 of the Constitution, praying for—

- (a) leave to proceed in the first instance;
- (b) an order on the Officer-in-charge of the Slave Island Police Station into whose custody the petitioner was delivered for adequate opportunity to prepare legal documents and affidavits;
- (c) an order of immediate release or custody in premises affording the petitioner proper bedding and surroundings conducive to health and comfort;
- (d) a declaration that the petitioner's fundamental rights had been violated;
- (e) compensation in a sum of Rs. 250,000 for costs and other relief.

At the outset the application under paragraphs (a) and (b) was granted, and an order made that the detenu be kept in custody in more congenial surroundings at the Slave Island Police Station. An indictment has now been served on the petitioner charging him with committing offences under the Emergency Regulations and he has been enlarged on bail by the High Court Judge of Colombo with the consent of the Attorney-General pending his trial.

The petitioner does not state in his petition with sufficient particularity which of the petitioner's fundamental rights have been violated. Learned President's Counsel appearing for the petitioner has submitted that the petitioner's fundamental rights under Articles 13(1), 13(2) and 13(4) of the Constitution have been violated.

The material before this Court consists only of affidavits, counter affidavits and certified documents.

The petitioner avers in his petition and affidavit that on the 22nd May 1985 he was arrested at his home in Kalmunai by de Cruz, Assistant Superintendent of Police, Kalmunai, the 3rd respondent. The petitioner states that de Cruz did not inform him of the reason why he was being taken into custody. He was only told by de Cruz that H. L. Piysena, Co-ordinating Officer, the 2nd respondent, wanted the petitioner brought to the Batticaloa Police Station. He was kept at the Batticaloa Police Station that night and taken to Colombo the next day. On the 24th May his statement was recorded at the Criminal

Investigation Department Office in Colombo and he was informed that an investigation was being made into an allegation that he was spreading false information and bringing the Government into disrepute. Thereafter the petitioner was kept in custody at the Slave Island Police Station.

The petitioner's wife has stated in her affidavit that she was present when de Cruz took her husband away on the 22nd May. De Cruz told her husband that Piyasena wanted her husband brought to the Batticaloa Police Station. De Cruz did not state any reason why her husband was being taken into custody.

De Cruz in his counter affidavit states that on the 22nd May he took the petitioner into custody. He informed the petitioner in the vehicle in which he was taking him that he was being arrested for communicating or spreading rumours or false statements.

Kumarasamy Krishnadasan, Headquarters Inspector of the Batticaloa Police Station, the 4th respondent, has stated in his affidavit that on the 22nd May de Cruz brought the petitioner in custody and handed him over to Krishnadasan to have him detained. The petitioner did not complain about the manner of his arrest.

The petitioner in his second affidavit, dated the 2nd July 1985, has averred that he has been on cordial terms with the police officers of the Kalmunai and Batticaloa Police Stations and with the co-ordinating officer Mr. Piyasena after he assumed duties in April 1985.

Under Article 13(1) of the Constitution "Any person arrested shall be informed of the reason for his arrest". On the material placed before this Court by way of affidavit and counter affidavit it is not possible to come to a positive finding that the petitioner was not informed of the reason for his arrest.

Learned President's Counsel complained that the petitioner had been produced by the police before the Magistrate, Colombo Fort, on the 25th June, 1985 three days later than thirty days after his arrest contravening the proviso to Regulation 19(1).

Regulation 19(1) and 19(2) of the Emergency Regulations in force states:

"19. (1) The provisions of section 36, 37 and 38 of the Code of Criminal Procedure Act, No. 15 of 1979, shall not apply in relation to persons arrested under Regulation 18.

Provided that where any person has been arrested and detained under the provisions of regulation 18 of these regulations, such person shall be produced before any Magistrate within a reasonable time, having regard to the circumstances of each case, and in any event, not later than thirty days after such arrest.

The production of any person in conformity with the provisions of these regulations shall not affect the detention of such person under paragraph (2).

(2) Any person detained in pursuance of the provisions of regulation 18 in a place authorized by the Inspector-General of Police may be so detained for a period not exceeding ninety days reckoned from the date of his arrest under that regulation, and shall at the end of that period be released by the Officer-in-charge of that place unless such person has been produced by such officer before the expiry of that period before a court of competent jurisdiction."

While the effect of Regulation 18 in combination with Regulation 19 does not require a judicial order in regard to the duration of the detention and the place of detention, yet the requirement for production of an arrested person before a Magistrate remains under the proviso to Regulation 19(1) "to ensure the safety and protection of an arrested person," per Wanasundera, J. in *Edirisuriya v. Navaratnam* (1). However the arrested person "shall be produced before any Magistrate within a reasonable time having regard to the circumstances of each case, and in any event, not later than thirty days after such arrest".

Article 13(2) of the Constitution states that—

"Every person held in custody detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court *according to procedure established by law*, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."

Procedure "established by law," for the present purpose is contained in the proviso to Regulation 19(1) of the Emergency Regulations. In our view Article 13 subsection (2) of the Constitution incorporates by reference the substance of what is contained in this

proviso. Accordingly the fundamental right referred to in Article 13(2) has to be read with Regulation 19(1) proviso, of the Emergency Regulations. In the instant case the petitioner was produced before the Magistrate, Colombo Fort, three days after the specified period. The belated production of the petitioner would therefore amount to violation of Article 13(2) of the Constitution.

Another submission of learned President's Counsel for the petitioner is that the continued detention of the petitioner from the date of his arrest to the time of filing his petition on the 11th June 1985 was illegal as none of the affidavits of the respondents aver that the petitioner was being detained pending further investigation into any offences under the Emergency Regulations alleged to have been committed by him.

The relevant portion of Article 13(4) of the Constitution states that—

“The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial shall not constitute punishment.”

Under Article 15(7) of the Constitution “The exercise and operation of all the fundamental rights declared and recognised by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security.” For the purposes of this paragraph “law” includes regulations made under the law for the time being relating to public security. Article 13(4) is not subject to any restrictions prescribed by law in the interests of national security.

Learned President's Counsel has drawn attention to a passage in my judgment in *Yasapalitha Nanayakkara v. Henry Perera and Others* (2) decided on the 9th August 1985, at page 11 which states:

“It is manifest, therefore, that the detention of a person arrested without warrant under Regulation 18 can be justified in law only if the detention is for further investigation. It would be unlawful to detain such a person for an unspecified and unknown purpose as this would be an infringement of Article 13(4). It necessarily flows from this that no sooner the further investigation is concluded the suspect is entitled to his release from detention without waiting for the duration of ninety days to be over.”

On the 23rd May 1985 the Inspector-General of Police by virtue of the powers vested in him under Regulation 19(2) authorised the Officer-in-charge, Police Station, Slave Island, to detain the petitioner "who had committed offences in contravention of Regulation 26" of Gazette Extraordinary No. 349/21 of 18.5.1985. The reason for the detention was stated in this order.

The petitioner has not complied with Regulation 65(1) (a) of the Supreme Court Rules as he has failed to particularize in his petition the fundamental rights which he alleges have been violated. This may have resulted in the omission in the affidavits of the respondents to state that the petitioner was detained for further investigation.

However, when the petitioner was produced before the Magistrate, Colombo Fort, on the 25th June, 1985, the Magistrate was informed by Assistant Superintendent of Police, Seneviratne, who produced the petitioner in Court, that the Criminal Investigation Department was making inquiries regarding the suspect and that relevant extracts were forwarded to the Attorney-General. This statement was recorded by the Magistrate (vide certified extract of record in M.C. Case No. B.R. 3053, marked 1R2). A report dated 25th June 1985 by Inspector G.R.D. Livera, C.I.D. was also filed in Court the same day stating that the C.I.D. were conducting investigations regarding the suspect and that the relevant extracts have been submitted to the Hon. Attorney-General for instructions. The submission of Learned President's Counsel that the detention of the petitioner was not for further investigation therefore fails.

We have already held that the non-production of the petitioner, even though the delay is only a period of three days, would still constitute a violation of his fundamental right contained in Article 13(2) of the Constitution. Article 13(2) embodies a salutary principle safeguarding the life and the liberty of the subject and must be exactly complied with by the executive. In our view this provision cannot be overlooked or dismissed as of little consequence or as a minor matter. To vindicate this principle which is of such significance, we would direct that the petitioner be paid a sum of Rs. 5,000 for the violation of his constitutional right. We direct that this sum be paid by the State. The petitioner would also be entitled to the costs of this application.

WANASUNDERA, J.—I agree.

ATUKORALE, J.—I agree.

State ordered to pay compensation.