CHANDRASIRI
v.
GEN. CYRIL RANATUNGA AND OTHERS

SUPREME COURT.
G. P. S. DE SILVA, C.J., KULATUNGA, J.
AND RAMANATHAN, J.
SC APPLICATION NO. 138/92.
03 FEBRUARY, 1993.

Fundamental rights – Emergency Regulations – Detention Order under Regulations 19 (2) and 17 (1) – Order for Rehabilitation.

The petitioner, a field officer on the Andipana Estate was arrested by army officers and detained in terms of an order made under Regulation 19 (2) of the Emergency Regulations. The petitioner was thereafter kept in continued detention under a preventive detention order made under Regulation 17 (1). He was thereafter released after rehabilitation.

Held :

1. There was no material to justify the detention made under Regulation 19 (2) or to satisfy the Court that the Secretary entertained the opinion that it was necessary to detain the petitioner under Regulation 17 (1).

2. The detention of the petitioner was invalid ; and the order for rehabilitation based on such invalid detention was also invalid, and violative of the petitioner's rights under Articles 13 (2) and 13 (4).

APPLICATION for violation of fundamental rights.

R. K. W. Goonesekera with *K. Tiranagama* for petitioner.

Hector Yapa, D.S.G. for respondents.

February 03, 1993.

KULATUNGA, J.

This Court granted the petitioner leave to proceed with his application in respect of the alleged violation of Articles 13 (2) and 13 (4) of the Constitution.

The petitioner states that he had been employed as a Field Officer on the Andipana Estate at Morawaka, drawing a salary of Rs. 1,500 per mensem. At the time of the filing of this application he was 30

years of age. He alleged that he was arrested by officers of the Heegoda Army Camp on 19.03.1990 and he was detained there. When that camp was closed down, he was handed over to the Urubokka Police Station on 27.06.1990 to be transferred to the Weerawila Detention Camp and he was so transferred on 29.06.1990.

The petitioner further states that the Officer-in-Charge of the Urubokka Police Station, by his letter dated 08.11.1991 (P1), addressed to the lawyers for Human Rights and Development, informed that on 04.11.1991 he had recommended the release of the petitioner as the evidence did not disclose any charges against him. However, the petitioner was not released and was kept in continued detention at the Detention Camp, Weerawila until 07.01.1992 when he was sent for a period of six months' rehabilitation at the Aesthetic Centre, Madiwela and was thereafter released. The petitioner in his affidavit filed on 16.11.1992 states that he was released after rehabilitation on 16.06.1992. However, according to the respondents he was officially released after rehabilitation on 10.06.1992. Learned Deputy Solicitor General explained that if there had been any delay in the actual release of the petitioner from the Rehabilitation Centre this may have been due to some delay in arranging for the handing over of the petitioner to a relation, which is the usual practice.

On the above facts, the petitioner alleges that his detention was unlawful and violative of Articles 13 (2) and 13 (4).

As regards the date of the petitioner's arrest, according to the petitioner he was arrested on 19.03.1990, whereas according to the respondents he was arrested on 27.06.1990. Learned Counsel for the petitioner drew our attention to the documents 1R1 and 2R1 and submitted that those documents support the petitioner's version that he was in fact arrested on some date anterior to 27.06.1990. 1R1 is a Detention Order under s. 19 (2) in terms of which it was directed that the petitioner be detained at the Weerawila Detention Camp. 2R1 is a letter dated 12.10.1991 addressed by the O.I.C., Urubokka Police Station to the 2nd respondent, the Chairman, Committee for Arrest, Separation, Classification, Rehabilitation and Release of Detainees. Both these documents indicate that the petitioner had been handed over to the Urubokka Police Station for the purpose of being transferred to the Weerawila Detention Camp. In 2R1 the

O.I.C., Urubokka Police Station specially affirms to this fact. In these circumstances, there is sufficient material to indicate that the petitioner had in fact been arrested prior to 27.06.1990. The respondents have not urged any reason as to why the petitioner should have falsely asserted that he had been arrested on 19.03.1990, if the truth is that he was arrested in June that year. We therefore, hold that the petitioner was in fact arrested on 19.03.1990 as stated by him. The effect of this conclusion would be that after his arrest the petitioner was detained at the Heegoda Army Camp until 28.06.1990 without any Detention Order to justify such detention. Such detention would be unlawful and violative of the petitioner's rights under Article 13 (2).

The 1st respondent (Secretary, Ministry of Defence) and the 2nd respondent have filed affidavits in defence of the impugned detention commencing with the Detention Order 1R1 dated 28.06.1990.

It is the case for the respondents that the petitioner was arrested on 27.06.1990 on suspicion of subversive activities and that this was confirmed by investigations carried out by the Urubokka Police. A Detention Order under Regulation 19 (2) of the Emergency Regulations (1R1) was obtained authorising the detention of the petitioner at the Weerawila Detention Camp for ninety days. This was followed by a Detention Order under Regulation 17 (1) dated 23.09.1990 (1R2). Thereafter on the recommendations of the O.I.C., Urubokka Police Station (which he made by his letter dated 12.10.1991 – 2R1) the petitioner was sent for rehabilitation for six months after which he was released on 10.06.1992. I have already referred to the complaint as regards the delay in releasing him after rehabilitation and the explanation offered by the learned Deputy Solicitor General.

A Detention Order under regulation 19 (2) is competent in respect of a person who is arrested on suspicion of an offence under the Emergency Regulations – Regulation 18. However, the Detention Order 1R1 does not refer to any such offence, but authorises the petitioner's detention to prevent him from acting in any manner prejudicial to the national security or to the maintenance of public order (which are in fact grounds for making a preventive detention order under Regulation 17 (1). The validity of a detention under Regulation 19 (2) for which a valid arrest under Regulation 18 is a

condition precedent has to be judged objectively on the basis of material placed before this Court. Whilst the Detention Order relied upon itself does not assist us in regard to the lawfulness of the arrest for any offence under the Emergency Regulations, the respondents have not placed any other material before this Court in that regard. Thus, they have failed to furnish to this Court notes of investigation, if any, which had been carried out by the Police. Learned Deputy Solicitor General informed us that there were certain information and intelligence reports on the basis of which the Detention Order was made. If that were so, copies of such information or reports have not been made available to this Court ; nor has any excuse for such failure been tendered. In these circumstances, the Detention Order 1R1 cannot be justified.

As regards the Detention Order under Regulation 17 (1), the 1st respondent was, no doubt, competent to make such an order if he was of the opinion that it was necessary to do so to prevent the petitioner from acting in any manner prejudicial to the national security or to the maintenance of public order. However, on the available material, we are not satisfied that in fact he entertained such opinion. We are of the view that this is a case in which the 1st respondent should have placed some material before this Court to so satisfy us on that matter even though he was competent to make the Detention Order on his subjective satisfaction as to the existence of the pre-conditions for making such order.

In this connection, it is relevant to note that the O.I.C., Urubokka Police Station, states in his letter 2R1 that the Detention Order under Regulation 17 (1) was obtained as the investigations had not been completed, which is not a valid ground for the making of a Preventive Detention Order ; so that one finds that the averment contained in the 1st respondent's affidavit that he made the Detention Order 1R2 to prevent the petitioner from acting in any manner prejudicial to the national security or to the maintenance of public order, is contradicted by the document 2R1, which had been addressed to the 2nd respondent by the O.I.C., Urubokka Police Station. In these circumstances, we hold that the Detention Order 1R2 was also not validly made.

As regards the Order for rehabilitation which according to the 1st respondent was made on the recommendations of the O.I.C., Urubokka Police Station contained in the letter 2R1, it is observed that the said

letter refers to forty six detainees. However, the letter 2R1 does not refer to the petitioner by name. On the other hand, the letter P1 written by the same police officer states that he had recommended the release of the petitioner as there was no material to frame charges against him. Hence, the statement of the 2nd respondent that such rehabilitation was recommended by the O.I.C. is an assumption which cannot be justified. In any event, an order of rehabilitation is competent if there is a valid detention. We have found the petitioner's detention to be invalid ; as such the order for rehabilitation was also invalid.

For the above reasons, we hold that the detention of the petitioner for over two years was unlawful and violative of his rights under Articles 13 (2) and 13 (4). The petitioner states that by reason of such detention, he has been deprived of his employment. He had been without employment during the period of his detention, and as a result of his unlawful detention, he has now been deprived of his employment and perhaps prospects of future employment. In the circumstances, we consider it just and equitable to direct the State to pay to the petitioner a sum of Rupees Fifty Thousand (Rs. 50,000) as compensation and a sum of Rupees One Thousand Five Hundred (Rs. 1,500) as costs.

Detention declared unlawful.

Compensation ordered.

G. P. S. DE SILVA, C. J. – I agree.

RAMANATHAN, J. – I agree.