A.K GOPALAN V. STATE OF MADRAS (Preventive detention Case)

PETITIONER: A.K GOPALAN

RESPONDENT: THE STATE OF MADRAS.

DATE OF JUDGMENT: 19/05/1950

CITATION: 1950 AIR 27, 1950 SCR 88

LAWS INVOLVED: Preventive Detention Act, 1950

Art. 13, Art.19, Art. 22, Art.21 of constitution of India.

BRIEF FACTS AND PROCEDURAL HISTORY:

1. The petitioner, A.K Gopalan, was previously detained and sentenced to various terms of imprisonment under ordinary law but most of the times his detention was set aside.

2. The Petitioner who was a communist leader this time was detained by the Madras Jail under the Preventive Detention Act, 1950 inspite of the already pending cases against him.

3.When the order of detention was issued to him under the act he was previously under detention of state government.

4. Petitioner challenged such detention on the grounds that his civil liberty was being curtailed.

5. The Petitioner filed a case under Art.32 of the constitution of India[1] for the writ of Habeas corpus[2], for the unlawful detention of the petitioner and for his release.

4. Also, the Petitioner challenged such detention on the grounds that the said detention violated his fundamental rights under Art. 13, 14, 19, 21, 22. Thus, such detention was consequently ultravires of the constitution and must be set aside.

ISSUE BEFORE THE COURT:

Whether the Preventive Detention Act, 1950 infringes the fundamental Rights Under the constitution?

CONTENTION OF BOTH THE PARTIES

1. The Petitioner contended that the said detention was in violation of his fundamental Rights guaranteed under Art.19, 21(Right to Freedom of Movement and Right to life and Personal Liberty) of the constitution of India and thus must be set aside. The Respondent contended that there was no violation of fundamental right and the said detention was valid and constitutional.

[1] INDIA CONST. art. 32.
[2] INDIA CONST. art.32.

RATIO OF THE COURT:

1. INTERPRETATION OF CONSTITUTIONAL PROVISONS : Both Kania CJ and Mahajan CJ were of the opinion that the courts were not at liberty to declare an act void because in their opinion it is opposed to a spirit supposed to pervade the constitution but not expressed in words[3].

2. Whether the act was in violation of article 19 :

It was held by the full court (Kania CJ ; B.K Mukherjee, Patanjali sastri and Das jj) that Article 19 has no Application to a legislation dealing with preventive or punitive detention as its direct object[4]. Thus sec 14 of the Act was though in violation of Article 19(5) of the constitution but the said section was separable from the rest of the act and the detention cannot be set aside merely on the ground of one section , the whole act was valid and Detention of the Petitioner was not illegal[5].

Das J. Has observed that Article has by providing detention, recognised that individual liberty may be subordinated to larger social interest.

3. The judges were of the opinion that Art.21 that guarantees Right to personal liberty were not protected by Article 19[6]. Majority of the judges were of the opinion that Right to Move Freely throughout the territory of India referred to under

[3] A.k Gopalan v. State of Madras, 1950 AIR 27.
[4] A.K Gopalan v. State of Madras, 1950 AIR 27.
[5] Indiankanoon.org
[6] INDIA CONST. art.19.

Art.19 (1)(d) was entirely different from the Right to Personal liberty and therefore should be read separately.

4. Judges in Majority opinion were of the view that the word "Law" has been used in the sense of State made Law and not as equivalent of law in the abstract or general sense embodying the principles if Natural justice.

Thus "procedure established by law" means procedure established by law made by the state , that is to say , union Parliament or state legislature and thus it must not be construed as "Due process of law" in the American Constitution by the supreme court of America[7].

DECISIONS HELD:

1. The Supreme Court held that Preventive Detention Act is intravires of the constitution of India excluding sec 14 of the Act which was illegal and unconstitutional.

Also section 12 of the act is ultravires of the constitution of India[8] and thus unconstitutional not affecting the rest of the act.

Note: The Preventive Detention Act, 1950 ceased to have effect on 31st December, 1969.

2. Supreme court ruled that he was detained according to procedure established by law and rejected his arguments and

[7] Indiankanoon.org
[8] Indiankanoon.org

believed that each article was separate in constitution[9]. Thus Art 19, 21 and 22 are mutually exclusive and are not interlinked as expressed by the court here.

3. A "Law" affecting life and liberty could not be declared unconstitutional merely because it lacked Natural Justice or due procedure[10]

4. Thus his Detention was valid and Constitutional not violating any of the fundamental Rights guaranteed by the Constitution of India.

MY CONCLUSION:

- The View expressed by the court was very narrow and conservative interpretation of Art.21 as personal liberty was considered just as a opposite of physical restraint and coercion and not the freedom to move freely .

- Art. 13,19, 21 are not mutually exclusive but on the contrary interdependent and must be read in consonance .

[10] Sweta Rath, *Judicial Activism Under Article 21: Going Beyond The Four Walls of the Judiciary*(September 6, 2014),ACADEMIKE, https://www.lawoctopus.com