Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05(HC)-132–05 OF 2018(B)

DAVID WONG CJ (SABAH AND SARAWAK), BALIA YUSOF, TENGKU MAIMUN, ABANG ISKANDAR AND NALLINI PATHMANATHAN FCJJ

17 JUNE 2019

Administrative Law — Exercise of administrative powers — Detention — Statement recorded from detainee by investigating officer under Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') not signed by detainee — Whether visual comparison of detainee's signatures in various other documents showed signature in recorded statement was not his — Whether every page of recorded statement not signed by detainee as was contended by two police officers in their affidavits — Whether detainee's recorded statement was crucial component of documents considered by Home Minister before he decided to issue detention order — Whether detainee's failure to sign recorded statement breached mandatory provision of the law rendering his detention unlawful — Whether burden of proving detention was lawful not discharged by detaining authority

The appellant ('Vishnu') was arrested and detained under s 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The first respondent ('R1') subsequently issued an order detaining Vishnu for two years at the Pusat Pemulihan Akhlak in Muar, Johor. Vishnu applied to the High Court for a writ of habeas corpus for his immediate release. He argued that his detention was invalid because: (a) a signature on a statement recorded from him ('the recorded statement') by a police officer ('Izhar') was not his but was made by someone else; and (b) his rights under the detention order were never explained to him in the Tamil language by an interpreter thereby breaching art 151(1)(a) of the Federal Constitution, s 9(2)(a) of the Act and r 3(1)(a) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ('the Rules'). In response to Vishnu's complaints, the respondents submitted that: (i) Vishnu never rebutted Izhar's affidavit stating that in issuing the detention order, R1 had not only considered the recorded statement but also the statements of other witnesses; and (ii) although Vishnu's preferred language was Tamil, he also understood Bahasa Malaysia and, in any event, the contents of the detention order were explained to Vishnu in Tamil by a police officer ('Gopiraj'). The High Court accepted the respondents' submissions, ruled that there was no procedural non-compliance and refused Vishnu's application for habeas corpus. The instant appeal was against that decision.

Held, allowing the appeal, setting aside the order of the High Court, granting a writ of habeas corpus and ordering Vishnu's immediate release from detention:

(1) There was merit in the appellant's contention that his recorded statement was defective. On perusing the appellant's signatures in his affidavit in support of the habeas corpus application as well as in Form I and contrasting them with the one in the recorded statement, the signature in the latter was markedly different from those in the other documents. Both Insp Izhar and Detective Corporal Gopiraj had deposed affidavits to say that the appellant had signed each and every page of the recorded statement, but the document clearly showed that that was not the case (see paras 17–19).

(2) The first respondent was statutorily bound to consider the reports of the investigating officer and the inquiry officer under ss 3(3) and 5(4), respectively, of the Act before deciding to detain the appellant. A component of those reports was the appellant's recorded statement which the law mandatorily required to be signed by the maker thereof. The statement had to be considered by the Minister before he directed his mind to granting the detention order. Since the recorded statement was defective, there was a clear breach of the mandatory provisions of the law thus rendering the detention illegal. The respondents had plainly failed to meet their burden of satisfying the court that the strict requirements of the law had been met to justify the legality of the appellant's detention (see paras 35, 41–42 & 45).

(3) Since the court found that the appellant was entitled to a writ of habeas corpus upon the determination of the issue of the recorded statement alone, it found it unnecessary to deliberate on the second issue concerning the alleged lack of a Tamil interpreter (see para 43).

[Bahasa Malaysia summary

Perayu ('Vishnu') telah ditangkap dan ditahan di bawah s 3 Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta'). Responden pertama ('R1') kemudian mengeluarkan perintah menahan Vishnu selama dua tahun di Pusat Pemulihan Akhlak di Muar, Johor. Vishnu memohon kepada Mahkamah Tinggi atas writ habeas corpus untuk pembebasannya. Dia mendakwa penahanannya tidak sah kerana: (a) tandatangan pada kenyataan yang direkodkan daripadanya ('pernyataan yang direkodkan') oleh seorang pegawai polis ('Izhar') bukanlah dia tetapi dibuat oleh orang lain; dan (b) hak-haknya di bawah perintah tahanan tidak pernah dijelaskan kepadanya dalam bahasa Tamil oleh seorang jurubahasa dengan itu melanggar perkara 151(1)(a) Perlembagaan Persekutuan, s 9(2)(a) Akta dan k 3(1)(a) Kaedah-Kaedah Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) (Prosedur Lembaga Penasihat) 1987 ('Kaedah-Kaedah'). Sebagai jawapan

terhadap aduan Vishnu, responden menyatakan bahawa: (i) Vishnu tidak pernah menyangkal afidavit Izhar yang menyatakan bahawa dalam mengeluarkan perintah penahanan, R1 tidak hanya mempertimbangkan pernyataan yang direkodkan tetapi juga penyataan saksi lain; dan (ii) walaupun bahasa pilihan Vishnu adalah bahasa Tamil, dia juga memahami Bahasa Malaysia dan, dalam apa jua keadaan, kandungan perintah tahanan dijelaskan kepada Vishnu dalam bahasa Tamil oleh seorang pegawai polis ('Gopiraj'). Mahkamah Tinggi menerima hujahan responden, memutuskan bahawa tidak ada ketidakpatuhan prosedur dan menolak permohonan Vishnu untuk habeas corpus. Rayuan ini terhadap keputusan tersebut.

Diputuskan, membenarkan rayuan, mengetepikan perintah Mahkamah Tinggi, memberikan writ habeas corpus dan memerintahkan pelepasan segera Vishnu daripada tahanan:

(1) Terdapat merit dalam pendapat perayu bahawa pernyataan yang direkodkan adalah cacat. Apabila meneliti tanda tangan perayu dalam afidavitnya untuk menyokong permohonan habeas corpus serta dalam Borang I dan membezakannya dengan pernyataan yang direkodkan, tandatangan di dalamnya adalah berbeza dengan yang terdapat dalam dokumen lain. Kedua-dua Insp Izhar dan Detektif Koperal Gopiraj telah mendeposkan afidavit untuk mengatakan bahawa perayu telah menandatangani setiap dan setiap halaman kenyataan yang direkodkan, tetapi dokumen itu jelas menunjukkan bahawa perkara itu adalah tidak sedemikian (lihat perenggan 17–19).

(2) Responden pertama adalah terikat secara statut untuk mempertimbangkan laporan pegawai penyiasat dan pegawai siasatan di bawah ss 3(3) dan 5(4), masing-masing, Akta sebelum membuat keputusan untuk menahan perayu. Komponen laporan tersebut adalah pernyataan yang direkodkan perayu yang mana adalah undang-undang mandatori perlu ditandatangani oleh pembuatnya. Pernyataan itu perlu dipertimbangkan oleh Menteri sebelum dia mengarahkan pemikirannya untuk memberikan perintah tahanan. Oleh kerana pernyataan yang direkodkan cacat, terdapat pelanggaran yang jelas mengenai peruntukan mandatori undang-undang sehingga membuat penahanan yang menyalahi undang-undang. Responden dengan jelas gagal memenuhi beban mereka untuk memuaskan hati mahkamah bahawa syarat-syarat ketat undang-undang telah dipenuhi untuk membenarkan kesahan penahanan perayu (lihat perenggan 35, 41–42 & 45).

(3) Oleh kerana mahkamah mendapati bahawa perayu berhak kepada satu writ habeas corpus atas penentuan isu pernyataan yang direkodkan, adalah didapati bahawa tidak perlu untuk membincangkan isu kedua mengenai dakwaan kekurangan jurubahasa Tamil (lihat perenggan 43).]

Notes

For cases on detention, see 1(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 79–88.

Cases referred to

Datuk James Wong Kim Min, Re [1976] 2 MLJ 245, FC (refd)
Kamal Azam bin Norddin v Timbalan Menteri Dalam Negeri & Ors (Criminal Appeal No 05(HC)-133–05 of 2018(B)) (unreported), FC (refd)
Lui Ah Yong v Superintendent of Prisons, Penang [1977] 2 MLJ 226 (refd)
Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Chua Teck [1990] 1 MLJ 104, SC (distd)
Muhammad Jailani bin Kasim v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors [2006] 6 MLJ 403; [2006] 4 CLJ 687, FC (refd)
Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1994] 3 MLJ 285; [1994] 4 CLJ 47, SC (refd)
SK Tangakaliswaran a/l Krishnan v Menteri Dalam Negeri, Malaysia & Ors [2010] 1 MLJ 149; [2009] 6 CLJ 705, FC (refd)
Yeap Hock Seng @ Ah Seng v Minister for Home Affairs, Malaysia & Ors [1975] 2 MLJ 279 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3, 3(3), 4(1), (5), 5(4), 6, 6(1)(a), (1)(b), 9(2)(a), 11A
Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 r 3(1)(a)
Evidence Act 1950 s 73
Federal Constitution art 151(1)(a)

Sivananthan Nithyanantham (Jay Moy Wei Jiun with him) (Sivananthan) for the appellant.
Muhammad bin Sinti (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

David Wong CJ (Sabah and Sarawak) (delivering judgment of the court):

INTRODUCTION

[1] This appeal stemmed from the decision of the High Court refusing to issue the appellant a writ of habeas corpus. We heard the appeal on 12 February 2019 and after careful consideration, unanimously allowed it.

[2] We set aside the order of the High Court, allowed the Appellant's application for a writ of habeas corpus and ordered that he be released from detention with immediate effect. These are our written reasons.

A BACKGROUND FACTS

[3] The appellant was arrested and detained under s 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') on 24 March 2017. The first respondent duly issued the order of detention ('detention order') on 18 May 2017 detaining the accused for a period of two years at Pusat Pemulihan Akhlak Muar, Johor with immediate effect.

[4] The appellant argued that his detention was invalid for two reasons:

(a) firstly, that his alleged statement recorded by Insp Muhamad Izhar bin Mohd Sani ('impugned recorded statement') was defective as the appellant never signed it. The appellant claimed that it was someone else who signed it; and

(b) secondly, the appellant's rights to make representations to the advisory board and to counsel as contained in the detention order were never explained to him in Tamil rendering his detention in breach of art 151(1)(a) of the Federal Constitution, s 9(2)(a) of the Act, and r 3(1)(a) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ('the 1987 Rules').

[5] On the first issue, the appellant argued that he had never signed his recorded statement. He claimed that any signature apparent there was not his. In response the respondents argued that there was an affidavit in reply by Insp Izhar deposing that he had considered not only the appellant's recorded statement but also statements by other witnesses leading up to the report which the first respondent considered before issuing the impugned detention order. This affidavit in reply, the respondents said, remained unrebutted by the appellant.

[6] On the second issue, the appellant's case was that he was not at all provided with a Tamil interpreter explaining to him his rights prior to the detention order stage.

[7] In response, the learned senior federal counsel for the respondents argued that the affidavits showed that while the appellant's preferred language was Tamil, he could understand Bahasa Malaysia. In any case, there was present one Detective Corporal Gopiraj a/l Moghan who translated the contents of the impugned detention order to the appellant in Tamil. In the result, the respondents took the position that the said contents were explained to the appellant twice. The respondents also alleged that there were in fact six deponents from various departments capable of verifying that the appellant understood Bahasa Malaysia.

THE DECISION OF THE HIGH COURT

[8] On the first issue, the learned judicial commissioner opined that the investigating authorities in making their reports did not merely rely on the appellant's impugned recorded statement but surely must have made oral inquiries of the appellant and had also considered the statements of other witnesses recorded by him. In support of his decision, the learned judicial commissioner relied on the authority of *Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Chua Teck* [1990] 1 MLJ 104.

[9] On the second issue, the learned judicial commissioner agreed with the respondents that on the evidence the appellant appeared to understand Bahasa Malaysia and that in any event, the contents of the impugned detention order were explained to the appellant in Tamil with the assistance of Detective Corporal Gopiraj. Thus, the High Court held that there was no procedural non-compliance, and accordingly refused the appellant's application for habeas corpus.

OUR DECISION

The law on habeas corpus generally

[10] The law on habeas corpus is trite. It is not a discretionary remedy. The writ must be issued if the court finds that the detenu is illegally or improperly detained. See *Yeap Hock Seng @ Ah Seng v Minister for Home Affairs, Malaysia & Ors* [1975] 2 MLJ 279 where at p 281, Abdoolcader J said as follows:

> The grant of habeas corpus is as of right and not in the discretion of the courl as in the case of such extraordinary legal remedies as certiorari, prohibition and mandamus. It is a writ of right against which no privilege of person or place can be of any avail (*R v Pell And Offly* 84 ER 720). The heavy musketry of the law will always be brought to bear upon any suggestion of unlawful invasion or infringement of the personalliberly of an individual in the form of habeas corpus and kindred orders where necessary to grant relief when warranted. It was aptly put in the American case of *State ex ref Evans v Broaddus* 245 Mo 123 140 that at least in times of peace every human power must give way to the writ of habeas corpus and no prison door is stout enough to stand in its way.

[11] Where a detainee challenges his detention as being illegal, the burden lies on the detaining authority to show that the detention is legal. *SK Tangakaliswaran a/l Krishnan v Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 MLJ 149 at p 153; [2009] 6 CLJ 705 at p 710 where Gopal Sri Ram FCJ said as follows:

> It is settled law that on an application for habeas corpus the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority. See,

Chng Suan Tze v The Minister of Home Affairs & Ors and other appeals [1989] 1 MLJ 69; [1988]1 LNS 162. In *Mohinuddin v District Magistrate, Beed* AIR 1987 SC 1977, the Supreme Court of India observed as follows in the context of art 22 of the Indian Constitution from which is drawn our art 151:

> It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the Court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This Court on more occasions than one has dealt with the question and it is now well-settled that it is incumbent on the State to satisfy the Court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the constitutional safeguards embodied in Art 22(5).

[12] Even if a detention was originally made in exercise of valid legal power, said detention may subsequently become invalid over a passage of time. See *Lui Ah Yong v Superintendent of Prisons, Penang* [1977] 2 MLJ 226 where at pp 227–228 Arulanandom J said:

> The second limb of the argument merits greater consideration, ie whether a detention which at its inception was legal could become illegal as a result of passage of time or for other reasons. The answer to this question will necessarily determine the result of this application ... In view of this it is quite obvious that the authorities have exhausted all avenues and are unable to remove the applicant to his place of embarkation or his country of citizenship. The powers of detention under s 34(1) are clearly and unambiguously limited to detention for the purposes of removal to one of two places, ie the place of embarkation or country of citizenship and therefore the moment the detaining authorities have failed or found themselves in a position where the object of detention cannot be fulfilled, then it cannot be argued that further detention remains lawful. The purpose of the detention having been frustrated, continued detention a fortiori becomes unlawful.

[13] Further, the applicant is entitled to take advantage of any technical defect which has the effect of invalidating the detention. See generally: *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285; [1994] 4 CLJ 47 where at p 294 (MLJ); p 55 (CLJ), Wan Yahya SCJ held as follows:

> [I]n cases of this nature the appellant is nevertheless entitled to take advantage of any technical imperfection which has the effect of invalidating the restrictive order; or to use the precise words of Regby J in *Ex Parte Johannes Choeldi & Ors* [1960] 1 MLJ 184 at p 186:
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> > The distinction, no doubt, is a highly artificial one. But this is an application for a writ of habeas corpus, and the applicants in matters which concern their persona/liberty, are entitled to avail themselves of any technical defects which may invalidate the order which deprives them of that liberty.

THE FIRST ISSUE — THE IMPUGNED RECORDED STATEMENT

[14] It must be stated at the outset, that the appellant appeared to mount his challenge against the decision making process leading up to the impugned detention order. This court has held in *Muhammad Jailani bin Kasim v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 6 MLJ 403 at p 413; [2006] 4 CLJ 687 at p 702, that the reports specified in s 6 of the Act are a critical pre-condition to the Minister's decision to detain. Any irregularity in this process is amenable to judicial review.

[15] For clarity, the relevant procedure leading up to the issuance of a detention order is this. Under s 3(3) of the Act, the investigating officer (in this case Insp lzhar), shall complete an investigation report and submit that to the inquiry officer. The inquiry officer shall then inquire whether there are grounds to detain the subject. He must then make his own investigation report under s 5(4) of the Act.

[16] The process then continues to the Minister stage. Under s 6(1)(a) and (b) of the Act, the Minister is required to consider both the investigating officer's report prepared under s 3(3) of the Act and the inquiry officer's report submitted to the Minister by virtue of s 5(4) of the Act.

[17] On the appellant's impugned recorded statement, it is open, under s 73 of the Evidence Act 1950 for the court to compare signatures to ascertain whether such signature is validly of whom it purports to be. We perused the appellant's signature as it appeared in his:

(a) affidavit supporting his habeas application; and

(b) in Form I which also had portions possessing his signature accepting service of the impugned detention order. His signature appeared numerous times in that document.

[18] The signatures in the above two documents were of course given at different times but we nonetheless found that they were consistent. We then contrasted said signatures with the one in the appellant's impugned recorded statement and found that his signature therein was markedly different from the ones in his supporting affidavit and in Form I.

[19] Also to note, both Insp Izhar and Detective Corporal Gopiraj averred in their respective affidavits in reply that the appellant signed each and every page of his impugned recorded statement. Having perused that document, we found that that was indeed not the case. We did not find the appellant's signature on every page. Simply put, their said averments materially

A contradicted what was apparent from the face of that very document. We therefore found merit in the appellant's contention that the impugned recorded statement was defective.

B **[20]** That being said, the larger question here was whether the defectiveness of the impugned recorded statement tainted the validity of the impugned detention order.

C **[21]** Now, the investigating officer Insp Izhar averred in para 23 of his affidavit in reply that he had not only considered the appellant's impugned recorded statement but also the statements of other witnesses the contents of which he could not disclose for the benefit of their protection.

D **[22]** The inquiry officer similarly averred in para 14 of his affidavit in reply that he did not merely rely on the initial police investigations but also conducted his own physical examination on the appellant and questioned the various witnesses himself. He said that he had included this in his s 5(4) report. On what the inquiry officer submitted to the first respondent, the appropriate portions of para 14 of his affidavit bear reproduction as follows:

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> *Saya telah menyatakan dalam laporan lengkap tersebut bahawa berdasarkan laporan lengkap penyiasatan oleh pihak polis* dan siasatan fizikal yang saya telah jalankan atas pemohon serta keterangan daripada saksi saksi saya telah berpuas hati bahawa terdapat alasan-alasan yang munasabah untuk mempercayai bahawa Pemohon mempunyai dan pernah ada kaitan dengan aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya ... Saya sesungguhnya menegaskan bahawa semua tindakan yang telah disempurnakan dengan menepati segala peruntukan undang-undang ... (Emphasis added.)

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G **[23]** The first respondent averred in his affidavit that upon perusing the reports, he was satisfied that there were grounds to detain the appellant and thereby issued the impugned detention order.

H **[24]** The learned judicial commissioner relied on the judgment of the Supreme Court in *Chua Teck* to hold that the Minister's detention order may still be sustained on the grounds that he satisfied himself through the various reports that the detention was justifiable. Upon scrutinising that judgment, we, with respect, opined that the learned judicial commissioner read that judgment out of context.

I **[25]** Briefly, the facts in *Chua Teck* were these. The detenu was detained under the same provision as the appellant in this case. As the headnotes have it, the Deputy Minister who signed the detention order had stated that he was satisfied that the respondent-detenu had associated himself in activities relating

to or involving drug trafficking and that it was necessary that the respondent be detained.

[26] The advisory board later reviewed the respondent's case and submitted a report to the Deputy Minister, recommending an extension of the detention order. The Deputy Minister considered the reports and information relating to the conduct and activities of the detenu and being satisfied that it was necessary in the interest of public order for the detention order to be extended. He thereby extended it for a further period of two years 'on the same grounds as the order was originally made'.

[27] The High Court issued a writ of habeas corpus, but on appeal the Federal Court reversed that decision. The gist of the complaint was that the Advisory Board had no power to advise the Deputy Minister to grant an extension of a detention order. Simply put, it was argued that the Deputy Minister erred in considering the advice of the advisory board.

[28] It was on this point that Hashim Yeop Sani (CJ Malaya) held it is open to the Minister to consider all information or reports available to him. So long as the Minister was satisfied that the original grounds of detention existed, he may exercise his discretion to extend the detention order.

[29] As was apparent from the facts of that case, that case concerned the power of the Minister to extend a detention order he issued under s 11A of the Act. So, the validity of the original detention order was not at issue in that case. The argument there instead concerned the validity of the Minister considering the advice of an institution which was not so empowered to give.

[30] The present case was materially different. It concerned the issuance of the original detention order under s 6 of the Act. Here, the first respondent was statutorily obligated to consider those reports. It is in this sense that we considered *Chua Teck* distinguishable. It therefore followed that the learned judicial commissioner's reliance on it was, with respect, misplaced.

[31] In the present case, it bears repeating that the first respondent considered primarily two reports. One prepared by the investigating officer, Insp lzhar, and the other by the inquiry officer. And, while the inquiry officer noted that he conducted his own investigation, he did state that in making his own report to the first respondent, that he had also placed reliance on what he garnered from Insp Izhar.

[32] Seeing as how the law mandatorily requires the first respondent to consider these reports, and that the first respondent himself deposed that he

had done so, it is clear that he had exercised his discretion to issue the impugned detention order based on the picture that was painted for him.

[33] We agree that the appellant did not rebut the fact that the reports submitted to the first respondent may have included other bases justifying his detention. But his complaint was that a component of those reports contained his defective impugned recorded statement. Equally true is the fact that nowhere had the investigating nor the inquiry officers rebutted the allegations that the appellant never made nor signed the said impugned recorded statement.

[34] Section 4(1) and 4(5) of the Act read:

> (1) For the purpose of satisfying the Minister that an order under subsection 6(1) should be made andforthe purpose of enabling the Minister to furnish a statement under paragraph 9(2)(b), *a police officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined …*
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> (5) A statement made by any person under subsection (1) *shall bear the date and time of making thereof and shall be signed by the person making it* or affixed with his thumbprint, as the case may be, after it has been read to him in the language in which it was made *and after he has been given an opportunity to make any corrections he may wish*. (Emphasis added.)

[35] We noted that the above provisions mandatorily require any statement recorded to be signed by the person who made it. Considering our finding that the impugned recorded statement as being defective, there had been a clear breach of this mandatory provision. Non-compliance with pertinent mandatory provisions render the detention illegal. See generally: *Re Datuk James Wong Kim Min* [1976] 2 MLJ 245 where at p 251, Lee Hun Hoe CJ (Borneo), said this:

> Preventive detention is, therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the court. In a matter so fundamental and important as the liberty of the subject, *strict compliance with statutory requirements must be observed in depriving a person of his liberty*. The material provisions of the law authorising detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. *Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith*. Where personal liberty is concerned an applicant in applying for a writ of habeas corpus is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. See *Ex Parte Johannes Choeldi & Ors* [1960] 1 MLJ 184.

[36] This is all the more so in a matter which actually lead the first respondent into his decision to detain the appellant. On this point, the following words of Augustine Paul FCJ in *Muhammad Jailani bin Kasim* at p 413 (MLJ); p 702 (CLJ), are most relevant:

> The challenge of the appellant in this case is not as to the validity of the prior arrest but as to the regularity of the current detention order in the light of defects in the procedure leading to the making of the order. The authority relied on cannot therefore be used as a shield to hide from procedural defects in the making of the current detention order. *The reports specified in s 6(1)(a) and (b) of the Act play a very significant role in the making of a detention order against a person. The Minister must consider these reports before making a detention order. They are therefore pre-conditions to the exercise of power under s 6(1) of the Act. They are part of the decision making process and not the decision itself. Thus they amount to procedural requirements governing the exercise of discretion by the Minister in making a detention order … A breach of this requirement is therefore subject to judicial review.*

[37] In other words, had the impugned recorded statement been properly recorded, the resulting two reports would have painted a different picture. As we see it, all the various statements be it of the appellant or of other witnesses form the different pieces of the puzzle. The Act effectively requires such statements recorded to be accurate hence the provision in s 4(5) enabling the maker of the statement to make corrections if necessary. It is only upon the proper collection of statements that the full and final picture may be presented to the first respondent before deciding whether to detain or not.

[38] We considered this to be the proper construction to be afforded to the mandatory provisions of s 4(1) and 4(5) of the Act lest they be rendered superfluous and the strict compliance thereto as being meaningless or a mere fagade.

[39] The respondents claimed that this defective statement point was recently considered in a recent decision of this court in *Kamal Azam bin Norddin v Timbalan Menteri Dalam Negeri & Ors* (Criminal Appeal No 05(HC)-133–05 of 2018(B)) delivered on 24 January 2019.

[40] The respondents argued that the Federal Court there had heard a similar argument on this point and refused the detainee a writ of habeas corpus. As at the date of our decision in this appeal, no written grounds had been delivered in respect of that case and so we were therefore unable to glean any reasons why such a decision was made. Therefore, we did not see how the said judgment lent any support to the respondents' case. Surely, in arriving at our decision, we had to consider and apply the law according to the facts and circumstances of this case.

[41] To put it concisely, the first respondent was statutorily bound to consider the ss 3(3) and 5(4) reports before making his decision to detain the appellant. A component of those reports is the appellants recorded statement which the mandatory provisions of the law require to be signed by the maker. It must be considered by the Minister before directing his mind to grant the detention order. Surely, he should be apprised of the full and proper picture lest there be reason for having mandatory provisions requiring him to consider those reports. Accordingly, we found no favour with what was essentially an argument that the appellant's defective impugned recorded statement could be simply slipped under the rug on the reason that the oral examinations of the appellant and other witnesses painted a good enough picture of the Minister to exercise his discretion to issue the detention order. That, to us, also defeated the purpose of having a mandatory provision requiring the said statement to be signed subject to corrections, in the first place.

[42] In this sense, in respect of the first issue, we arrived at the view that there was procedural non-compliance on the part of the respondents. We therefore opined that the respondents had plainly failed to meet their burden to justify the legality of the appellant's detention. Therefore, on the first issue alone, we saw it fit to allow the appeal and thereby issued a writ of habeas corpus for the appellant's release.

THE SECOND ISSUE — THE ALLEGED LACK OF A TAMIL INTERPRETER

[43] Having decided that the appellant was entitled to a writ of habeas corpus on the first issue alone, we did not consider it necessary to deliberate on the second issue.

CONCLUSION

[44] For the reasons aforementioned, we were of the view that the learned judicial commissioner had erred in arriving at the conclusion that he did. In the result, we considered this an appropriate case for appellate intervention.

[45] Thus, in our considered view, as the detaining authority was unable to meet its burden to satisfy us that the strict requirements of the law were met, we arrived at the view that the detention was unlawful, and thereby allowed the appeal. We accordingly issued a writ of habeas corpus and ordered the appellant be released forthwith.

Appeal allowed, order of the High Court set aside, writ of habeas corpus granted and ordering Vishnu's immediate release from detention.

Reported by Ashok Kumar