
(1999) 05 AHC CK 0130

In the Allahabad High Court

Case No : Writ Petition Nos. 104, 107 and 108 (H.C.) of 1999

Abdul Hafiz and Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 25-05-1999

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1999) 05 AHC CK 0130

Hon'ble Judges : Virendra Saran, J and S.K.Agarwal, J

Final Decision : Disposed Of

Judgement

S.K. Agarwal, J.

1. These three writpetition have been filed by Abdul Hafiz, asool Ahmad and Mohd. Shahid challenging their Detention under the provisions of National Security Act, Le. under Section 3 (2) of the Act. The detention orders against all the three petitioners were passed by the District Magistrate, Etah on 2291998.

2. We have heard Sri K.S. Rastogi, learned Counsel for petitioner Abdul Hafiz, Sri Virendera Bhatia, learned Counsel for the petitioners Mohd. Shahid and Rasool Ahmad. We have also heard learned Government Advocate and the learned Counsel for Union of India.

3. Since the facts in that the three writ petitions are almost common and in each of these petitions the anchorsheet of the argument of the learned Counsel for the petitioners is that the continued detention of the petitioner has been rendered bad in law on account of unexplained and inordinate delay in disposal of the representation of the petitioners by the Central Government, we are disposing of the three petitions by a common judgment.

4. So far as the writ petition No. 104 (HC) of 1999 filed by Abdul Hafiz is concerned, it emerges from the counteraffidavit filed by Bina Prasad on behalf of Central Government that two representations were filed. The first representation on his behalf was filed by his brother on 2691998. The second one was

submitted by the detainee himself on 14101998. These representations were received in the Ministry of Home Affairs, New Delhi on 7101998 and 26101998. Both these representations were examined and processed by the Home Ministry officials on 12101998 and 26101998. Certain vital information i.e. opinion of Advisory Board was required for deciding these representations. This information was sought through crash wireless messages dated 12101998 and 28101998. First crash wireless message was received by State Government on 14101998. The State Government vide its radiogram dated 15101998 informed Central Government of the fact that the report of Advisory Board had not been received by them. The counteraffidavit filed by Bina Prasad, Under Secretary Union of India is completely silent regarding this radiogram and its receipt. This fact is mentioned in the counteraffidavit filed by State Government though its Under Secretary R.A. Khan.

5. The report of the Advisory Board was received by the Central Government on 11111998. Thus the Central Government waited for this report regarding first representation for 30 days and for 14 days with respect to second representation.

6. On 16111998, Deputy Secretary examined the case and prepared his comments. The case was put up before Joint Secretary on 17111998. In turn he presented the case before Home Minister on 17111998. The Home Minister rejected the representation of this detainee on 23111998.

7. So far as the Home Minister is concerned 21 and 22111998 were claimed as holidays. Similarly for officials of Ministry of Home Affairs, 14 and 15111998 were claimed as holidays. From 11111998 till 23111998, 12 days were taken in processing and deciding the representation. No other explanation is offered for the rest of the days. The Home Minister took five days before he rejected the representation.

8. Petition No. 104 (HC) of 1999 was partly heard on 1151999 and hearing continued on 1251999. The other two petitions i.e. writ petition No. 107 (HC) of 1998 and writ petition No. 108 (HC) of 1998 came up for hearing on 1251999. All these detention orders arise from one solitary incident dated 2081998.

9. As already observed by us earlier, the detention orders in respect of the three detainees were passed by the detaining authority i.e. District Magistrate, Etah on 2291998. They were served upon the detainees on the same day. On this very day, the District Magistrate, Etah had also forwarded all the papers including the grounds for detention for consideration to the State Government, Lucknow. They were received by the Government on 2391998. The detention order was approved by the Government of Uttar Pradesh on 2991998. All the relevant papers were also reported to the Central Government by the State Government on 2991998. They were received by the Secretary, Ministry of Home Affairs, New Delhi on 1101998. The petitioner Rasool Ahmad's representation dated 2691998, addressed to the Government of Uttar Pradesh, was received by the District Magistrate, Etah, on 2691998. The comments from Superintendent of

Police, on the representation were sought by the District Magistrate, on the same day. After the receipt of the comments on 2791998, the representation was forwarded on 2891998 to the Secretary, Union of India, Ministry of Home Affairs, Internal Security Department, New Delhi. It was received in the Ministry of Home Affairs on 7101998. Thus, it had taken, in transit, 9 days in reaching its destination Le. Ministry of Home Affairs. It was immediately processed and in the course of processing it was found that certain vital information was required for further consideration of the representation from the State Government. This necessary vital information was sought through a crash wireless dated 9101998 and by a subsequent reminder dated 28101998, the required vital information was received by the Central Government on 9 111998 through the State Government's radiogram dated 7111998. After the receipt of the said vital information, the case was put up before the Director, Ministry of the Home Affairs, on 12111998, Le. 3 days after its receipt by the Ministry of Home Affairs. The representation was carefully considered and comments were prepared. It was put up before the Joint Secretary, Ministry of Home Affairs on 12111998. The Joint Secretary also promptly considered the same and put up the same before the Home Minister, Government of India on that very day Le. 12111989. The Home Minister considered the representation of the detainee and rejected the same on 17111998. It had been brought to our notice that in between the span of 5 days excluding the date of decision, on the representation, two days were holidays.

10. In the writ petition No. 108 (HC) of 1998 filed by Mohammed Shahid, all other facts are identical except that the representation was received by the Central Government in the Ministry of Home Affairs on 5101998 and the vital information in this case was sought on the same day as in the case of Rasool Ahmad. In between, on 14101998 in reply to the crash wireless message seeking vital information by Ministry of Home Affairs, Government of India, the State Government had informed that the report of the Advisory Board which was sought is not available as yet. It will be pertinent to mention that the report of the Advisory Board was received on 7111998, by the State Government. In Writ Petition No. 107 (HC) of 1998 filed by Rasool Ahmad, this information that the report of the Advisory Board is not available was communicated to the Government of India on 17101998. Barring these two differences in the facts, there is hardly any difference in the dates and other facts.

11. The argument in support of this contention of delay in decision of these representations by the Central Government rests mainly on the ground that there was delay in the transit Le. the representation had taken 9 days in reaching the Ministry of Home. In this context, the counteraffidavit filed on behalf of the State Government by Sri R.A. Khan, Under Secretary states 30th of September, 1998, 1st and 2nd October, 1998 to be in the holidays. What is important is that the Government of Uttar Pradesh had reported the detention of the petitioner to the Secretary, Ministry of Home Affairs, New Delhi on 1101998. Thus, the benefit of any holiday in the circumstances cannot be made available

to the Government of Uttar Pradesh for the purpose of transit as well. Moreover, the representations in the present case were sent by the District Magistrate to the Government of India, Ministry of Home Affairs on 25/9/1998. Thus, in these circumstances, the receipt of the representation on 5/10/1998 in Writ Petition No. 107 (HC) of 1998 and 17/10/1998 in Writ Petition No. 108 (HC) of 1998 and Writ Petition No. 104 (HC) of 1998 clearly suggests that in one case it had taken 7 days and in the other case it had taken 9 days in reaching the Ministry of Home Affairs.

12. So far as the despatch of these representations by the District Magistrate is concerned, it has taken only two days. The District Magistrate had received it on 26/9/1998 and had despatched the same to the State Government as well as to the Central Government on 28/9/1998. Thus, there is no delay so far as its despatch is concerned, it is affected clearly by three holidays intervening in between. They are 30/9/1998, 1/10/1998 and 2/10/1998. Excluding these three days from this period of transit, the Home Ministry had received these representations within 3 days in one case and within 5 days in the other cases. In our opinion this does not constitute any delay so far as the period of transit is concerned. Moreover, the law enjoins on the State Government only a duty to report the factum of detention to the Central Government with the grounds on which the impugned orders were made within 7 days. Thus, there is no delay.

13. Coming to the next limb of the arguments on the points of delay in disposal of the representation, it is argued that the period awaiting the vital information was too long and such vital information i.e. report of the Advisory Board, was not at all required in law for the decision of the representations of the detainees by the Central Government.

14. It has been held by the apex Court that the right to get his representation decided by the Central Government or the State Government is exclusive and independent of any decision of the representation of the detenu by the Advisory Board. This was held to be a constitutional right of the detainee and in our opinion, the Central Government has to form its independent opinion and there was absolutely no necessity for the Central Government to await the receipt of the report of the Advisory Board. It has further been held by the apex Court that if a representation is made to the Central Government by the person detained under the National Security Act, his representation is to be considered expeditiously and disposed of with due promptitude and diligence and with a sense of urgency as inordinate and unexplained delay in the disposal of the representation would vitiate the detention order. In this reference, two reported decisions of the Supreme Court *Rama Dhondu Boarde v. V.K. Saraf, Commissioner of Police and others*, 1989 (26) ACC 617 (SC) and the other case is *Aslam Ahmad Zahire Ahmad Shaik v. Union of India and others*, 1989 (26) ACC324 (SC), need reference.

15. In this context, reference to a Division Bench decision of this Court reported in *Pappu alias Avasan Singh v. Adhikshak Janpad Karagar, Mainpuri*, 1999 (1) JIC

124:1999 L. Cr. R 23 (Allahabad), needs reference. It has held that "the Government without awaiting for the report of the Advisory Board has to consider the representation and dispose it of at the earliest". The apex Court has also held in 1993 SCC (Cr.) 1126 that the report of the Advisory Board is not to be awaited for the disposal of the representation.

16. In view of these decisions, the long wait for the report of the Advisory Board by the Central Government for deciding the representations of the petitioners assumes significance. In these cases this period comes to nearly 30 days.

17. Section 3 (5) of the National Security Act confers power on the Central Government to consider the representation of a detenu forwarded to it by him. This representation is to be considered by the Central Government independent of any report of the Advisory Board or the decision of the State Government. In two petitions i.e. Writ Petition No. 107 (HC) of 1998 and Writ Petition No. 108 (HC) of 1998, the information was sought by the Central Government from the Government of Uttar Pradesh on 9/10/1998. Another reminder was sent on 21/10/1998. The information was received on 9/11/1998 by the Ministry of Home Affairs, Government of India. Thus, the Central Government has waited for the receipt of the report of Advisory Board as vital information for a full one month. Thereafter it had taken about 9 days further in the decision of the representation which were rejected by the Home Minister on 17/11/1998. In Writ Petition No. 104 (HC) of 1999, it was required on 12/10/1998 and received on 11/11/1998 i.e. 30 days. The representation was rejected on 23/11/1998 in this case i.e. 12 days taken in this case. In our opinion, this inordinate delay in processing the representation for consideration by the officials of the Home Ministry is against the provisions of law especially when on 14/10/1998, 15/10/1998, 17/10/1998 the information about no report of the Advisory Board with the State Government was already communicated to Central Government. It renders the continued detention of the petitioners illegal.

18. Moreover, in the present case, the two representations made by Mohammed Shahid and Rasool Ahmad were processed and put up before the Home Minister on 12/10/1998. The Home Minister has decided the representations on 17/10/1998. Only two days i.e. 14th and 15th November, 1998 were the holidays in between. The question still remains as to what happened on the other days for which the representation remained lying on the table of the Home Minister. The counteraffidavit filed by Sri Bina Prasad remains conspicuously silent about these dates.

19. In view of these circumstances, we are of the opinion that even consideration of the representation by the Central Government was not expeditious enough to render the continued detention of the detainees valid in the eyes of law. In this context, reference to a decision of the apex Court in the case of Rajammal v. State of Tamil Nadu and another, 1999 (38) ACC 312 (SC), is necessary. The observations of the apex Court are quoted asunder: "The position, therefore,

now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained the authority concerned."

20. The contention of the learned Counsels for the respondents that none of these detainees are entitled to any benefit as there are hardly any latches on the part of Central Government or the State Government does not hold any water in view of our discussions made above.

21. In view of the above discussions, we find that the continued detention of the three petitioners is rendered illegal by abnormal delay on the part of Central Government in deciding their representations.

The writ petition Nos. 104 (HC) of 1999, 107 (HC) of 1999 and 108 (HC) of 1999 are allowed. The continued detention of the petitioners on the basis of above detention orders, all dated 22 91998, are hereby quashed. We further direct the petitioners to be released forthwith if not otherwise wanted in any other case.