

(2010) 04 AHC CK 0049

In the Allahabad High Court

Case No : Criminal M.H.C.W.P. No. 3812 of 2010

Abhimanyu Singh alias Dampal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

National Security Act, 1980 — Section 10, 3(2), 3(3), 3(4), 9

Citation : (2010) 2 ACR 1534

Hon'ble Judges : S.C. Agarwal, J;Poonam Srivastav, J

Bench : Division Bench

Advocate : Akanksha Yadav, for the Appellant; H.C. Dubey, A.G.A. and A.S.G.I., for the Respondent

Judgement

S.C. Agarwal, J.—This habeas corpus petition has been filed for setting aside the order of detention dated 17.11.2009, passed by District Magistrate, Jalaun at Orai against the Petitioner Abhimanyu Singh alias Dampal u/s 3(2) of the National Security Act (hereinafter referred to as the "Act").

2. The detention order was passed on the grounds that on 10.8.2009 at 12.30 p.m. at Block Office Campus, Nadigaon, the Petitioner and his companions prevented Sri. Bhagirath Sharma from filing nomination papers for the post of Sanchalak of Sadhan Sahkari Samiti. On intervention by one Sri. Gauri Shankar, the Petitioner and his companions abused him and assaulted him causing injuries. On the same day at 1 p.m., another candidate Sri. Govind Singh was also prevented from filing nomination papers and he was also beaten by the Petitioner. Firing was also resorted to causing injuries to Sri. Govind Singh. This incident caused a great feeling of fear and panic amongst the members of the public, public order and election process were also disturbed.

3. District Magistrate apprehended that bail might be granted to the Petitioner by the Court and there was apprehension that the Petitioner would again involve himself in the aforesaid criminal activities affecting public order, hence it was thought necessary to preventively detain the Petitioner.

4. We have heard Km. Akanksha Yadav, learned Counsel for the Petitioner, learned A.G.A. for the Respondents No. 2 to 5 and Sri. H.C. Dubey, learned Counsel for Respondent No. 1.

5. Learned Counsel for the Petitioner has confined herself to one submission that the representation of the Petitioner dated 27.11.2009, which was submitted to various authorities including the District Magistrate, State Government, Advisory Board and the Central Government through Jailor, was forwarded by the District Magistrate with inordinate delay.

6. Counter-affidavit filed by Sri. Shiv Saran, Deputy Jailor, District Jail, Orai on behalf of Respondent No. 5 reveals that the representation of the Petitioner was received on 27.11.2009 and on the same day it was sent to the office of the District Magistrate, Jalaun.

7. Paragraph 21 of the counter-affidavit filed by Sri. Saurabh Babu, District Magistrate, Jalaun-Respondent No. 4 is as follows:

21. That in reply to the contents of paragraph No. 23 of the petition, it is submitted that Petitioner's representation dated 27.11.2009 was received in the office of the deponent in the evening of 27.11.2009. 28.11.2009 and 29.11.2009 were holidays on account of Id-ul-zuha (bakrid) and Sunday. On 30.11.2009, deponent directed the Judicial Assistant for preparation of parawise comments by contacting Senior Prosecution Officer, Jalaun, he told that after studying the matter, comments will be prepared, on 4.12.2009 and 5.12.2009 comments were prepared with the help of police authorities, 6.12.2009 was Sunday, thereafter, deponent prepared his own comments on 12.12.2009 and deponent put his signature on 13.12.2009 and sent the same to Dispatch Section to send the State Government on 14.12.2009. Information about rejection of the representation by the authorities was duly informed to the Petitioner through jail authorities as and when received. Allegation to the contrary is totally false and denied.

8. Admittedly, the representation of the Petitioner was received by the District Magistrate on 27.11.2009. It was dispatched to the State Government on 14.12.2009 after a delay of 17 days. Explanation of delay given in paragraph 21 of the counter-affidavit filed by the District Magistrate is most unsatisfactory and shocking. The first two days after the receipt of representation were holidays, then the District Magistrate directed the Judicial Assistant for preparing para-wise comments by contacting Senior Prosecuting Officer, who told that he would study the matter and comments were prepared on 5.12.2009. Again on 6.12.2009, being Sunday, the District Magistrate prepared his own comments on 12.12.2009 and signed the same on 13.12.2009. No explanation for the delay from 6.12.2009 to 12.12.2009 has been furnished.

9. Counter-affidavit filed on behalf of the State Government-Respondent No. 2 reveals that the Petitioner's representation alongwith para-wise comments thereon, forwarded by the District Magistrate, Jalaun at Orai to U.P. Advisory

Board (Detentions), vide his letter dated 14.12.2009 was received in the concerned Section of the State Government on 15.12.2009. The representation was finally rejected by the State Government on 24.12.2009. In paragraph 5 of the counter-affidavit it has been averred that the case of Petitioner was referred to the Advisory Board by the State Government by forwarding the detention order, grounds of detention and all other connected documents on 24.11.2009, well within three weeks from the date of his actual detention, as required u/s 10 of the Act. The Board heard the Petitioner in person, considered his representation and gave its report expressing therein its opinion that there was sufficient cause for the detention of the Petitioner.

10. Section 10 of the Act provides as under:

10. Reference to Advisory Board. - Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it u/s 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in Sub-section (3) of Section 3, also the report by such officer under Sub-section (4) of that section.

11. Section 10 of the Act makes it mandatory for the appropriate Government to place before the Advisory Board within three weeks from the date of detention, the grounds of detention and the representation, if any, made by the detenu. This provision is mandatory and any violation of this provision would result in detention being unlawful. In the instant case, the detention order was passed on 17.11.2009. It was mandatory for the District Magistrate and the State Government to ensure that the detention order alongwith the representation of the Petitioner is placed before the Advisory Board within three weeks from the order of detention. The detenu, by order dated 17.11.2009, was directed to present his representation within 12 days. The Petitioner submitted his representation on 27.11.2009 within time. The District Magistrate did not forward the same to the Advisory Board through State Government promptly, but kept sitting on it for 17 days. The representation of the Petitioner was to be submitted by the State Government to the Advisory Board within three weeks from the date of detention order, i.e., latest by 8.12.2009, but on that date the representation was not even received by the State Government and remained pending with the District Magistrate. We are satisfied that the action of the District Magistrate in keeping the representation of the Petitioner pending with him for 17 days was deliberate to prevent the representation being submitted to the Advisory Board within time. The delay caused by the District Magistrate cannot be said to be bona fide.

12. In view of the aforesaid, we have come to the conclusion that there was inordinate delay on the part of the District Magistrate in forwarding the representation of the Petitioner to Advisory Board through State Government.

The delay was not bona fide and has not been properly explained. The representation of the Petitioner was not submitted to the Advisory Board within three weeks from the date of detention order though the representation was submitted by the Petitioner well within time. The provision of Section 10 of the Act stands violated and consequently the detention order is rendered illegal. In these circumstances, we have no option but to quash the continued detention of the Petitioner.

13. The writ petition is allowed. The Petitioner shall be released forthwith unless wanted in connection with any other case.