
(2003) 05 AHC CK 0274
In the Allahabad High Court
Case No : H.C. Writ Petition No. 836 of 2003

Balbeer

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5)
National Security Act, 1980 — Section 3(2), 8

Citation : (2003) 3 ACR 2364

Hon'ble Judges : U.S. Tripathi, J;D.P. Gupta, J

Bench : Division Bench

Advocate : J.S. Sengar and Ajit Kumar Singh Solanki, for the Appellant; A.G.A. and S.C., for the Respondent

Judgement

U.S. Tripathi, J.—This writ petition has been filed by the Petitioner for quashing his detention order dated 7.9.2002, passed by District Magistrate, Bulandshahr, Respondent No. 1 u/s 3(2) of National Security Act.

2. Though the detention order was challenged on various grounds, but the learned Counsel for the Petitioner has confined his argument only on two points: (1) The representation of the Petitioner was not decided by the Central Government, which infringed his fundamental right guaranteed under Article 22(5) of the Constitution of India and (2) the statements of prosecution witnesses were recorded subsequently and the witnesses turned hostile and did not support the case of prosecution and it shows that detaining authority has not applied his mind.

3. Since for decision of above two points, the detailed facts of the case, on the basis of which detention order is passed is not essential, therefore, we are not advertng to the facts of the case in detail.

4. We have heard Sri J. S. Sengar assisted by Sri Ajit Kumar Singh Solanki, learned Counsel for the Petitioner, learned A.G.A. and learned standing counsel

and have gone through the record.

5. Regarding non-decision of representation of the Petitioner by the Central Government, it was alleged in para 27 of the petition that against the detention order, the Petitioner submitted representation through Jail Superintendent, Bulandshahr, to the detaining authority, State Government, Advisory Board and Union of India on 10.9.2002. In para 30 of the petition, it was alleged that the Petitioner was informed by Sri V. K. Gupta, Additional Secretary, Union of India that the Union Government rejected the representation of the Petitioner, but it has not stated that a word that as to when the representation of the Petitioner was rejected by the Union Government. In para 31 it was alleged that there is considerable delay in deciding representation of the Petitioner on the part of Union of India.

6. In para 5 of his counter-affidavit Sri C. P. Tripathi, Deputy Jailor, District Jail, Bulandshahr, disclosed that the Petitioner has submitted his representation to the Jail Authorities on 13.9.2002 and on same day the said representation was sent to the office of District Magistrate, Bulandshahr, for further action in the matter.

7. The counter-affidavit of Sri Sudhir Garg, District Magistrate, Bulandshahr, disclosed that the Petitioner submitted his representation which was received in the office of District Magistrate, Bulandshahr on 13.9.2002, which was sent to S.S.P., Bulandshahr on same day and on 14.9.2002 the report of S.S.P., Bulandshahr was received in his office. The representation of the Petitioner and comments were sent to the State Government and to the Central Government on 16.9.2002 through special messenger.

8. The counter-affidavit of Sri C. P. Singh, Deputy Secretary, Home and Confidential Department, U.P. Civil Secretariat, Lucknow disclosed that the Petitioner's representation dated 13.9.2002 along with parawise comments thereon, forwarded by the District Magistrate, vide his letter dated 16.9.2002, was received in the concerned section of State Government on 18.9.2002. The State Government sent copies of the representation and parawise comments thereon to Central Government by letter dated 18.9.2002.

9. In the counter-affidavit of Sri Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, it was disclosed in paras 6 and 8 as below:

That with regard to paras 27, 30, 31 and ground 7, 10 of para 38 of the petition are denied being incorrect. It is stated that a representation dated 13.9.2002 from the detenu along with parawise comments of the detaining authority was received by the Central Government in the Ministry of Home Affairs on 18.9.2002 and in the concerned Desk of Ministry of Home Affairs on 18.9.2002 through District Magistrate, Bulandshahr on behalf of State Government of Uttar Pradesh vide letter No. 1618/J.A. dated 16.9.2002.

This representation was addressed to Home Secretary, Government of Uttar

Pradesh and not to the Central Government. It was returned to the State Government of Uttar Pradesh for dealing u/s 8 of the N.S.A., 1980.

10. The above counter-affidavit on behalf of Union of India shows that since the representation of the Petitioner dated 13.9.2002 was not addressed to the Central Government, it was not decided by it.

11. Neither the Petitioner nor the Respondents have filed copy of representation of the Petitioner. Therefore, we have called for record and have perused the same. The copy of the representation of the Petitioner dated 13.9.2002 is on record and it shows that it was addressed to Grih Sachiv, Uttar Pradesh Shasan, Lucknow. The above representation was neither addressed to Central Government nor there was any endorsement to Central Government.

12. The learned Counsel for the Petitioner relied on Division Bench decision of this Court in *Sher Singh v. Union of India and Ors.* (46) 2003 ACC 380. In the said case representation of the Petitioner was addressed to the Central Government and the State Government, but the State Government sent the copy of representation, which was addressed to State Government to the Central Government and it was held that on account of the aforesaid mistake of the second facet of the fundamental right guaranteed to the Petitioner detenu by Article 22(5) of the Constitution of India, namely his right to make a representation at the earliest opportunity, against the detention order, has been violated. The facts of the present case are different and in this case the representation was neither addressed to the Central Government nor there was any endorsement to the Central Government and therefore, the above decision is not applicable to the facts of the present case. In this way, there was justification for the Central Government for not deciding the representation.

13. The next contention of the learned Counsel for the Petitioner was that the statements of the prosecution witnesses were recorded subsequently, but they did not support the case and therefore, the detaining authority was not justified in passing the order, as it was passed without applying mind. No such specific plea was taken in the petition and therefore, the Respondent, the detaining authority could not give any explanation regarding this fact. It is true that law of pleading is not strictly applicable to the habeas corpus petitions, but the fact and the ground on which the detention order is challenged must be specifically pleaded so that the Respondents may be in a position to give its proper reply. The alleged statements of the witnesses are also not on record. It appears that those statements came into existence after passing of the detention order and therefore, were not relevant materials for passing the detention order.

14. In view of our above discussions and observations we find no force in the above petition. The petition is, accordingly, dismissed.