
(2006) 10 AHC CK 0124

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 21955 of 2004

Dharam Pal Yadav

APPELLANT

Vs

Superintendent, District Jail, Budaun & Ors.

RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Article 3

Citation : (2006) 10 AHC CK 0124

Hon'ble Judges : M.C.Jain, J and K.K.Misra, J

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This Habeas Corpus Petition came to be filed under Article 226 of the Constitution of India, challenging the impugned detention order dated 2252004 passed by the District Magistrate, Budaun under Section 3(2) of the National Security Act and claiming compensation for illegal detention.

2. The facts of the case are that the petitioner, while being lodged in District Jail, Budaun, was served with a detention order alongwith grounds of detention on 1252004. The detention order was not approved by the State Government on 2252004. On the same day, i.e., 2252004 second detention order was passed by the District Magistrate Budaun and was served on the petitioner in district jail the same day. During the pendency of the present Habeas Corpus Petition, the order of detention was revoked by the State Government. Learned Counsel for the petitioner Sri D.S. Misra has argued that since his earlier detention order dated 1252004 was not approved by the State Government, the subsequent revocation entitles the petitioner to damages. In support of his contention claiming compensation for the illegal detention of the petitioner, main arguments of Sri D.S. Misra are two fold.

3. The first ground for compensation is that since the earlier detention order stood revoked as the same was not approved by the State Government, subsequently fresh detention order passed on the same day on same facts was

not permissible under the law. On this aspect, he has laid emphasis on the proviso to Section 14 subclause(2) of the National Security Act and has urged that as there was no fresh fact, there was no necessity of passing a fresh detention order and this illegal act on the part of the respondents entitles the petitioner to claim compensation.

4. Secondly, he argued that the petitioner had demanded certain documents from the detaining authority for making an effective representation, but the copies of the same were not supplied to him and nonsupply of essential documents precluded the petitioner from making an effective representation for infringement of his fundamental right which entitles him to damages.

5. Sri Misra also argued that the detention order was passed mala fide due to political considerations and the petitioner is entitled to claim compensation for his illegal detention.

6. In opposition, learned A.G.A. Sri Arvind Tripathi submitted that the District Magistrate was empowered to pass fresh detention order on the basis of fresh ground dated 1852004 after the earlier detention order dated 1252004 was not approved by the State Government. He contended that fresh detention order could be passed even without any fresh ground/fresh facts as there was no bar under the Act for passing a fresh detention order after nonapproval of the earlier detention order by the State Government. According to him, the only rider was that the period of 12 months will be counted from the date of earlier detention. Learned A.G.A. further argued that if the detention order is mala fide, the burden to prove the absence of good faith is upon the petitioner and not on the State. Lastly, he argued that under Section 16 of the Act, a protection has been provided to the authorities for the action taken in good faith. According to Section 16 of the Act, no suit or other legal proceeding shall lie against the Central Government or a State Government and no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act. He emphasized on the fact that if the procedure for passing the impugned detention order and protection provided under Article 22 of the Constitution of India has not been strictly complied with, then the detenu will be entitled for release from illegal detention but it will not be a ground for claiming compensation.

7. In support of his contention Sri D.S. Misra placed reliance mainly on three cases. The first case is Mahboob Ali v. Supdt. District Jail & Ors., 2002 (1) JIC 794 (All). In this case, costs of Rs. 5000/were awarded. But the facts of that case were entirely different. In that case, the detention order dated 17122001 was passed by the District Magistrate in exercise of the power under Section 3(2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 pursuant to which the petitioner was detained in District Jail, Moradabad. The detention order was passed on two grounds. The first ground related to an incident dated 17th March 1999 on the basis of which case crime No. 49 of 1999 under Section 3/7 of the Essential Commodities Act was

registered. The second incident on which the detention order was grounded was of 30th May 2001 on the basis of which a case crime No. 375 of 2001 under Sections 417, 420, 285, 286, 379, 411 and 23 of Petroleum Act and another case crime No. 342 of 2001 under Sections 379, 411, 285, 420 I.P.C. and 23 of Petroleum Act had been registered. The first ground of 1999 incident was found to be remote and not proximate to the order of detention. The Court found that the detention order could not be sustained even on the basis of the second ground because it was not possible to find as to what extent the mind of the detaining authority was influenced by the first irrelevant ground. The detaining authority had stated in specific terms in the grounds of detention that the incident of case crime No. 49 of 1999 was also a ground of detention. It was pointed out that there was no Section like that of Section 5A of National Security Act in the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Section 5A of the National Security Act provides that grounds of detention are severable). The Court held that it could not be postulated as to what view would have been taken by the detaining authority about the need to detain the petitioner if he had not taken into account the stale ground of 1999 case, It was for these reasons that the order of detention was found to be unsustainable which was quashed. While quashing the detention order, the Court imposed the costs of Rs. 5000/in favour of the petitioner for his illegal detention for a period of three months.

8. The situation in the present case is quite different because the subsequent detention order was revoked by the State Government before occasion arose for the Court to record a finding as to its sustainability or otherwise To import the analogy of Mahboob Ali's case to support the contention of compensation in the present situation would be like a square peg in a round hole.

9. The second case relied upon by Sri D.S. Misra is D.G. and L.G. of Police & Ors. v. Prem Sagar & Anr., 2000(1) JIC 272 (SC) : 2000 (40) ACC 212. In this case, the High Court directed the Sessions Judge to inquire into the detention of one Bhav Sagar who was said to have been illegally detained by the police since 26/9/1992. On the report of the Sessions Judge, the Court came to the conclusion that the detention was illegal for the period of one month and for such illegal detention compensation of Rs. 20,000/was awarded. Obviously, in that case, the question related to detention which was per se illegal but it did not relate to detention under any special statute. The detention was to pass the test of ordinary law which it could not. The detention was found to be per se illegal. It was not a case under the National Security Act which is a special Act with entirely different position. There is a difference between a preventive Act and ordinary law. No doubt, law of preventive detention has to pass the test not only of Article 22 of the Constitution of India but also of Article 21. If the procedure established by law which is reasonable, fair and just and not arbitrary, whimsical or fanciful) has been followed, the detention order will not be illegal. In the case at hand, Sri D.S. Misra, learned Counsel for the petitioner could not point out that there was any deviation from the prescribed procedure under the Act.

10. The third case relied upon by Sri D.S. Misra is D.K. Basu v. State of West Bengal, 1996(2) JIC 1541 (SC) : (1997) 1 SCC 416. In that case, it was stressed that the compensation can be awarded only for redressal of established violation of Article 21 of the Constitution of India. We do not think that the said ruling entitles the petitioner to claim compensation in the present case, he having been detained under the National Security Act. He was detained under National Security Act and before the Court could record any finding as to the sustainability or otherwise of the detention order, the same came to be revoked by the State Government as per the provisions contained in the said Act.

11. The cases of police atrocities and illegal police custody cannot be equated with the preventive detention under Special Act. Broadly speaking, if any atrocity is committed on the person of the accused while he is in police custody, Articles 21 and 22 of the Constitution of India would be applicable, but that analogy cannot be imported when a person is detained under preventive Act and no atrocity is shown to have been heaped upon the detenu. So far as the National Security Act is concerned, reference should also be profitably made to Section 16 which provides that no suit or other legal proceedings shall lie against Central Government or State Government and no suit, prosecution or illegal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

12. Despite pointed inquiry, the learned Counsel for the petitioner could not cite any case of National Security Act under which the compensation might have been awarded where detention order was revoked by the Central or State Government during the pendency of Habeas Corpus Petition before the High Court and before the Court recording a finding of the detention order being illegal. On the other hand, a Division Bench of this Court held in the case of Lallan Singh v. Secretary, Department of Home Affairs, U.P. Lucknow & Ors., 1987 A.L.J. 489, that the claim for damages for wrongful detention under the National Security Act is not maintainable in view of the Supreme Court decision in the case of Kamlakar Chaturvedi v. State of Madhya Pradesh, (1983) 4 SCC 443.

13. Further, the Supreme Court held in the case of Sube Singh v. State of Haryana & Ors., 2006(2) JIC 321 (SC) : (2006) 2 SCC (Cri) 54, while dealing with the question of compensation, that Courts may award compensation under Articles 32 and 226 in cases where violation of Article 21 involving custodial death/torture is established or is incontrovertible. But it may not award the same where there is no evidence of custodial torture. The Apex Court held that cases where violation of Article 21 involving custodial or torture is established or is incontrovertible stand on a different footing when compared to those cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar it may not be prudent to accept claims of human right's violation, by

persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims. The Courts should, therefore, while zealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable the police to discharge their duties fearlessly and effectively.

14. Before awarding compensation, the Courts will have to pose itself the following questions : (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial tortured is supported by medical report or visible marks or scars of disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the Courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

15. In the present case, there is no averment that any kind of torture was practised on the petitioner while he was in detention. It has to be kept in mind that he was detained under preventive law after following the prescribed procedure under the National Security Act. In a case of preventive detention, one may be detained merely on suspicion with a view to prevent him from doing any harm in future to the society and the opportunity that he has for contesting the action of the executive is very limited. The authority concerned passed the second detention order dated 2252004 on fresh facts after following the prescribed procedure given under the Act. As we said, learned Counsel for the petitioner could not cite a single ruling to support the claim of compensation in identical set of circumstances. Needless to say, the present petitioner was detained under the authority of law and was also released under the provisions of the relevant preventive law. His detention order was revoked by the State Government. Learned Counsel for the petitioner could not show that the petitioner's liberty had been violated otherwise than in accordance with the procedure established by law.

16. As regards mala fide argued by Sri Misra in support of his claim we find that he has not made a single averment in the petition. In the case of Naranjan Singh Nathawan & Ors. v. State of Punjab, 1952 Cri. L.J. 656, it was observed that 'the position is now made more clear by the express provisions of Section 13 of the Act which provides that a detention order may at any time be revoked or modified and that such revocation shall not bar the making of fresh detention order under Section 3 against the same person'. It was further observed that 'the question of bad faith, if raised, would certainly have to be decided with reference to the circumstances of each case, but the observations in one case

cannot be regarded as a precedent in dealing with other cases?. This analogy would squarely apply to the present case in defeating the claim of compensation put forth from the side of the petitioner in this petition.

17. In the case of *Ashutosh Lahiry v. State of Delhi & Anr.*, AIR 1953 S.C. 451, it was held that the satisfaction of the authority making the order as to the matters specified in the Act is the only condition for the exercise of his powers and the Court cannot substitute its own satisfaction for that of the authority. The burden of proving the absence of "good faith is upon the detenu and it is certainly a heavy burden to discharge. Mere suspicion is, however, not proof.

18. Further, the position is firmly established in the field of law that the Court would decide no more than needs to be decided in a particular case. Abstract questions present interesting challenges, but it is for scholars and text book writers to unravel their mystique. It is not for the Courts to decide questions of academic importance.

19. In view of above legal and factual matrix, we do not find any merit in the claim of compensation put forth by the petitioner.

20. The Writ Petition is dismissed.