

(2004) 09 OHC CK 0004

In the Orissa High Court

Case No : Writ Petition (Cri.) No. 207 of 2003

Durga Prasad Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Constitution of India, 1950 — Article 22(5)
General Clauses Act, 1897 — Section 21
National Security Act, 1980 — Section 14, 3(2)

Citation : (2004) CLT 1121 (Suppl Cri) : (2005) CriLJ 485 : (2004) 29 OCR 444 : (2004) 2 OLR 455

Hon'ble Judges : Sujit Barman Roy, C.J.;B.P. Das, J

Bench : Division Bench

Advocate : Sanjit Mohanty, N.C. Sahoo, S. Pattanaik, D. Mohanty, P.K. Muduli, R.R. Swain and S.K. Nanda, for the Appellant; S. Das, A.S.C. (C), for the Respondent

Final Decision : Allowed

Judgement

Sujit Barman Roy, C.J.—By this habeas corpus petition under Article 226 of the Constitution of India, petitioner has prayed for quashing the order No. 511/C dated 24-9-2003 issued by the District Magistrate, Puri under Sub-section (2) of Section 3 of the National Security Act, 1980 for detention of the petitioner so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The impugned order of detention is annexed to the petition as Annexure-1 and it reads as under :-

"Court of the District Magistrate, Puri Order No. 511/C dated Puri, the 24th September, 2003.

Whereas, I Shri Digambar Mohanty, IAS, District Magistrate, Puri has been directed in Government of Orissa Home (Special Section) Department Order No. 2945/C dt. 16-6-2003 to exercise the powers conferred by Sub-section (2) of

Section 3 of the National Security Act, 1980.

Whereas, I am satisfied that with a view to prevent Sri Durga Prasad Mohapatra alias Papu aged about 33 years, son of Late Nabaghan Mohapatra of village Subalpur, Satasankha, P.S. Pipili, District-Puri, who is in jail custody in Puri District Jail, from committing further criminal activities and it is apprehended that as soon as released on bail he will again resort to activities prejudicial to the maintenance of Public Order.

Therefore, in exercise of the powers conferred by Sub-section (2) of Section 3 of the National Security Act, 1980, I do hereby direct that the said Durga Prasad Mohapatra be detained in the District Jail, Puri until further orders.

Sd/- D. Mohanty, District Magistrate, Puri 24-9-2003"

3. The said order of detention was issued when the petitioner was detained in custody as under trial prisoner in Puri District Jail in connection with some police case. The impugned order of detention was served upon the petitioner on 24-9-2003 itself when the petitioner was in judicial custody in connection with Satyabadi P. S. Case No. 109 of 2003. The impugned order of detention contains a further recital that it was apprehended that as soon as the petitioner would be released on bail, he may resort to activities prejudicial to the maintenance of public order. On 27-9-2003 the grounds of detention under Annexure-2 was served upon the petitioner giving him an opportunity to make representation against the impugned order of detention. It has been stated in the grounds of detention that petitioner was involved in certain police cases as mentioned therein. About four days after the grounds of detention was served upon the petitioner, on 1-10-2003 the State Government in exercise of its power conferred upon it under Sub-section (4) of Section 3 of the Act approved the order of detention passed against the petitioner. The said order dated 1-10-2003 issued by the Government reads as under :-

"Government of Orissa Home (Special Section) Department Order

Dated, Bhubaneswar, the 1-10-2003.

No. 5643C. In exercise of the powers conferred by Sub-section (4) of Section 3 of the National Security Act, 1980 the State Government do hereby approve the detention order dated 24-9-2003 made by the District Magistrate, Puri detaining Shri Durga Prasad Mohapatra alias Papu son of Late Nabaghan Mohapatra of Subalpur, Satasankha, P.S. Pipili, District Puri and specify that the said Durga Prasad Mohapatra alias Papu shall be detained until further orders in the District Jail, Puri.

By Order of the Governor Sd/- Illegible Under Secretary to Government, 1-10-2003."

However, on 8-10-2003, petitioner submitted his representation to the Government of Orissa, District Magistrate, Puri, Government of India and the

Advisory Board constituted under the said Act through the Superintendent of District Jail, Puri against the impugned order of detention. However, on 14-10-2003, the Government of Orissa rejected the representation of the petitioner dated 8-10-2003 in one line without assigning any reason. Similarly, on 21-10-2003, the Government of India, rejected the aforesaid representation of the petitioner dated 8-10-2003 without assigning any reason whatever. The said representation dated 8-10-2003 submitted by the petitioner was rejected by the Government of Orissa and the Government of India after delay of about 7 days and 13 days respectively. Copy of the order dated 14-10-2003 passed by the Government of Orissa rejecting the representation of the petitioner has been annexed to the petition as Annexure-7. The said order of the Government of Orissa under Annexure-7 dated 14-10-2003 reads as under :-

"Government of Orissa Home (Special Section) Department Memo No. 5692/C dated, Bhubaneswar the 14th Oct 03

To

Sri Durga Prasad Mohapatra, a detenu under N. S. Act, 1980 now lodged in the District Jail, Puri.

Ref :- His representation dated 8-10-2003 addressed to the State Government.

The State Government after careful consideration of the above representation have been pleaded to reject it.

Sd/- Illegible Under Secretary to Government 14-10-2003"

Likewise, the order of the Government of India dated 21-10-2003 by which the representation of the petitioner dated 8-10-2003 was rejected has been annexed to the petition as Annexure-8. The said order of rejection passed by the Government of India reads as under :-

"No. II/15030/12/2003-NSA Government of India Ministry of Home Affairs New Delhi, dated the 21-10-2003

To Shri Durga Prasad Mohapatra, alias Papu, s/o Late Nabaghan Mohapatra, Superintendent, District Jail Puri, Orissa.

Sir,

I am directed to refer to your representation dated 8-10-2003 addressed to the Central Government against the detention order passed by the District Magistrate, Puri on 24-9-2003 under NSA, 1980.

The representation has been considered carefully but your request has not been acceded to by the Central Government.

Your's faithfully, Sd/- P. K. Jain, Under Secretary to the Government of India."

4. Petitioner also appeared before the Advisory Board on 30-10-2003. Thereafter,

by an order dated 17-11-2003 (Annexure-9), the Government of Orissa intimated the petitioner that the Advisory Board to whom the case of the petitioner was referred u/s 10 of the said Act was of the view that there existed sufficient cause for his detention. Accordingly, in exercise of powers conferred by Section 12(1) of the said Act, the Government of Orissa confirmed the said detention order and accordingly directed that the petitioner should be continued in detention for 12 months in the District Jail, Puri. The said order of detention reads as under :-

"Government of Orissa Home (Special Section) Department Order

Dated, Bhubaneswar, the 17th November, 2003. No. 6213/C. Whereas Shri Durga Prasad Mohapatra alias Papu son of Late Nabaghan Mohapatra of Subalpur, Satsankha, P.S. Pipili, District Puri has been detained under Sub-section (2) of Section 3 of the National Security Act, 1980 (65 of 1980) from 24-9-2003 in pursuance of the order dated 24-9-2003 of the District Magistrate, Puri.

And whereas the Advisory Board to whom his case was referred u/s 10 of the said Act is of the opinion that there is sufficient cause for his detention. Now, therefore in exercise of the powers conferred by Section 12(1) of the said Act, the Government of Orissa do hereby confirm the said detention order and direct that the said Sri Durga Prasad Mohapatra alias Papu shall continue in detention for 12 (Twelve) months in the District Jail, Puri until further orders.

By order of the Governor Sd/- Illegible Under Secretary to Government 17-11-2003"

In these circumstance, the petitioner has approached this Court in this writ petition for appropriate relief, as already stated.

5. One of the grounds agitated by the learned counsel for the petitioner before us is that representation dated 8-10-2003 made by the petitioner to the State Government and Central Government were disposed of after a delay of about 7 days and 13 days respectively. According to the learned counsel for the petitioner, it is the settled law that right to representation under Article 22(5) of the Constitution includes right to expeditious disposal not only by the State Government under the relevant provisions of the Statute but also by the Central Government. To buttress his aforesaid contention, learned counsel for the petitioner heavily relied upon a decision of the Apex Court in Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others, On perusal of the said decision, we find that it was indeed observed by the Apex Court in paragraph 6 of the judgment that "It is settled law that right to representation under Article 22(5) of the Constitution includes right to expeditious disposal not only by the State Government under the relevant provision of the statute, but also by the Central Government. But in each case it is one of fact to be ascertained whether the Central Government or the State Government, as the case may be, has caused delay due to negligence, callous inaction, avoidable red tapism and undue protection by the authorities concerned. As stated earlier, expedition is the rule and delay defeats mandate of

Article 22(5). So the authority is obligated to explain the delay by either filing a counter affidavit by the officer concerned on behalf of the appropriate Government or by producing the record in dealing with the case."

6. However, the Central Government in its counter-affidavit in paragraph 5 thereof has specifically pleaded that the Central Government has no obligation to entertain the representation from the petitioner as the Central Government is not the detaining authority in respect of the petitioner. According to the pleadings of the Central Government made in paragraph 5 of its affidavit, the Central Government or the officers subordinate to it having not issued the order of detention, Central Government has no power to entertain such a representation against the detention of the petitioner.

7. We are sorry to say that the contention of the Central Government is not correct. Section 14 confers the overriding power of the Central Government to revoke or modify an order of detention. Section 14 reads as under:-

"14. Revocation of detention orders.- (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time be revoked or modified,-

(a) notwithstanding that the order has been made by an officer mentioned in Sub-section (3) of Section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The expiry or revocation of a detention order (hereinafter in this Sub-section referred to as the earlier detention order) shall not (whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984) bar the making of another detention order (hereinafter in this Sub-section referred to as the subsequent detention order) u/s 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order."

Undoubtedly, National Security Act is an Act made by Parliament. Section 21 of the General Clauses Act is clearly applicable to any notifications, orders, rules or bye-laws issued thereunder. It provides that where by any Central Act or Regulation, a power to issue notifications, orders, rules or by laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

8. In the circumstances and in view of Section 14 of the Act and Section 21 of the General Clauses Act, it is manifest that the Central Government has a power to revoke or modify a detention order issued under the Act whether by the Central Government or State Government or by any subordinate officer to such Government. This being the clear provisions of law, we have absolutely no hesitation in our mind that the Central Government has the required power to modify or revoke the detention order passed by the State Government or any of its subordinate officers.

9. It appears from the counter-affidavit filed on behalf of the Central Government that instead of explaining the delay in disposing of the representation of the detenu, it took shelter under a wrong conception of law that the Central Government has no power to entertain a representation from a detenu under the National Security Act in respect of whom the detention order was issued by the State Government or by officers subordinate to it.

10. As no explanation is forthcoming from the Union of India as regards this delay, we are bound to hold that the delay has not been explained by the Union of India. As a matter of fact, the Central Government in fact rejected the representation of the petitioner. It is therefore, manifest that the Central Government indeed entertained the representation of the petitioner by rejecting the same on merit. After having so rejected the representation of the petitioner-detenu, it was not proper on the part of the Central Government to plead that it has no power to entertain a representation from the detenu as the detention order in respect of the detenu was issued by an officer subordinate to the State Government.

11. In this circumstance, we are left with no option but to allow this petition. We, therefore, quash the impugned order of detention and direct that the detenu be set at liberty forthwith, if he is not required to be detained in any other case.