

(2003) 05 AHC CK 0221

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 7503 of 2003

Javed Iqbal

APPELLANT

Vs

Supdt., Central Jail and Others

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2)

Citation : (2003) 2 ACR 1695

Hon'ble Judges : S.R. Alam, J;K.K. Misra, J

Bench : Division Bench

Advocate : D.S. Misra, for the Appellant; A.G.A., for the Respondent

Judgement

K.K. Misra, J.—By means of this writ petition under Article 226 of the Constitution of India, the Petitioner has challenged the validity of detention order dated 11.12.2002 passed by the District Magistrate, Allahabad, Respondent No. 2 u/s 3(2) of the National Security Act (briefly, the Act) against him.

2. Counter and rejoinder-affidavits have been exchanged.

3. Heard Sri D. S. Misra, learned Counsel for the Petitioner and learned A.G.A. for the State.

4. The short contention raised by the counsel for the Petitioner Sri D. S. Misra is that the Petitioner had made three representations dated 16.12.2002/2.1.2003, 3.1.2003 and 12.1.2003 but all these three representations were not decided by the Union of India separately, instead it was observed that "the said representations were considered and it was decided to adhere to our earlier decision taken on 7.1.2003. This callous approach on the part of the Central Government entitles the Petitioner to be released forthwith from his detention.

5. In the case of Satya Priya Sonkar v. Adhikshak Kendriya Karagar, Naini, Allahabad and Ors. 1999 (3) ACR 2297: 2000 (1) JIC (All), it was held in para 18 as under:

From the aforesaid legal position expressed by Hon''ble Supreme Court about the representation, it is clear that the second or successive representation may be made by the detenu during the period of his detention and such representations are to be considered and decided expeditiously...it is common experience that an argument or submission based on certain facts, which does not appeal to a Tribunal or authority of first instance, may find acceptance with a higher Tribunal or supervisory authority. This analogy may be applicable to the same authority as well. It is well known that an authority or Court which at first instance does not accept the submission, on re-hammer accepts the same on subsequent occasion. From the aforesaid observations, it is clear that the representation submitted to the Central Government or the State Government even if it is based on same ground, it cannot be ignored and has to be considered by the appropriate authority. The observations of the Division Bench in case of Sushil Kumar (supra) are also very material.

6. In para 9 of the supplementary counter-affidavit of Sri Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, it is stated that "the detenu had submitted three more representations dated 2.1.2003, 2.1.2003 and 12.1.2003...he said representations were considered and it was decided to adhere to our earlier decision taken on 7.1.2003". From para 9 of the above supplementary counter-affidavit, it is clear that subsequent representations of the Petitioner were not considered separately and the decision taken on first representation was decided to be adhered in the subsequent representations. Non-consideration of the subsequent representations of the Petitioner vitiates his detention order and is liable to be quashed on this ground alone.

7. In the result the petition is allowed. The detention order dated 11.12.2002 passed by the District Magistrate, Allahabad, Respondent No. 2 is quashed. The Petitioner shall be set forth at liberty unless he is required to be detained in some other case.

8. In circumstances of the case, the parties are directed to bear their own costs.