
(2002) 02 DEL CK 0007
In the Delhi High Court
Case No : Criminal Writ Petition No. 1385/01

Manish Bahal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Citation : (2002) 4 AD 281 : (2002) 97 DLT 509 : (2002) 62 DRJ 556

Hon'ble Judges : Vinod Sagar Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : Naveen Malhotra, for the Appellant; Mukta Gupta, for State, K.K. Sud, ASG, Dharam Pal, Addl. SHO, Barkha Babbar, Neeraj Jain and PS S. Rohilla, for the Respondent

Final Decision : Dismissed

Judgement

Khan, (J.

1. Petitioner was first detained u/s 3(2) of National Security Act, 1980 for one year by order dated 17.5.1999 passed by R-3 to prevent him from acting in any manner prejudicial to the maintenance of public order. This order was approved on 20.5.1999. Petitioner made a representation against it which was rejected and the order was confirmed by R-1 on 21.6.1999.

2. Petitioner challenged this in Crl.W.809/98 which was allowed and his detention order quashed by court order dated 14.12.1999. He was consequently released from detention pursuant thereto after serving approximately seven months" detention.

3. Respondents, however, took appeal against this order before the Supreme Court which over-turned it by judgment dated 9.7.2001 holding thus:-

"On the discussions made and the reasons stated in the foregoing paragraphs, we are constrained to hold that in the facts and circumstances of the case, the judgment of the high Court is unsustainable. Accordingly, the appeal is allowed,

the judgment dated 14.12.1999 in CrI.W.809/99 is set aside. Since about five months have elapsed after the judgment of the High Court was delivered, we leave it open to the detaining authority to decide whether respondent (petitioner herein) should be taken in detention to complete the unexpired period.

4. Thereafter R-3 passed fresh detention order dated 10.9.2001 ordering petitioner's detention for the unexpired period of five months and two days to prevent him from acting in any manner prejudicial to the maintenance of public order. This order specifically provided that it was being passed in pursuance of the Supreme Court judgment dated 9.7.2001. Petitioner was thus again detained and is presently serving the unexpired detention period of five months and two days which was also to expire shortly.

5. Petitioner's case, as articulated by his counsel Mr. Naveen Malhotra is that though Supreme Court had not directed petitioner's detention second time by its judgment dated 9.7.01, yet R-3 had passed the second detention order without any probative or rationale material and on non-application of mind. The order was punitive in character as it was passed two months after the Supreme Court judgment and two years after the first detention order. No fresh grounds were communicated to petitioner and no relied upon documents supplied. His request for referring his second representation to Advisory Board on new facts and material including the two acquittals earned by petitioner was also rejected. Learned counsel relied upon two Supreme Court judgments in Gokul Chand v. Administrator 2000 SCC 260 and Ram Bali Rajbhar v. The State of West Bengal and Ors. 1975 SCC 321 to urge that it was obligatory for respondents to refer his representation which highlighted new facts and material to the Advisory Board second time at his request.

6. R2-3 have justified the detention order asserting that it was the continuation of the first order and was passed after considering all documents, material, information and the facts of the case and also the mandate of Supreme Court judgment dated 9.7.2001 to prevent petitioner from indulging in any prejudicial to the maintenance of public order and to make him serve the unexpired detention period of five months and two days. Since the order was not passed on any new material, there was no need to communicate any grounds afresh to petitioner or to supply him any relied upon documents which was done on the execution of first order. It is also explained by them that his representation received on 5.11.2001 was promptly dealt with and disposed of by order dated 12.11.2001 and communicated to him next day.

7. The Union (R-1) has also submitted its counter to show that report of NCT of Delhi u/s 3(5) of the Act was considered but it was not deemed necessary to revoke the detention order or to communicate its outcome to petitioner, though his representation was promptly attended to and he was informed about its disposal on 22.11.2001.

8. State counsel Ms. Mukta Gupta representing R2-3 contended that fresh

detention order dated 10.9.2001 was passed in continuation of the first order dated 17.5.1999 pursuant to Supreme Court judgment which had left it open to the detaining authority to decide whether to detain the detenu again to complete the unexpired period of detention. Since this order was not passed on any fresh material, the question of communicating any grounds or supplying any relied upon documents to petitioner did not arise. Nor was the appropriate government obliged to make any second reference to the Advisory Board for consideration of his second representation against impugned order even though it may have contained some new material. Mr. Sud, Ld.ASG submitted that any acquittals earned by the detenu after his release upon High Court orders quashing his detention and upset later by the Supreme Court would not be considered on fresh material warranting any reconsideration by the Advisory Board.

9. What remained to be seen in this background was whether impugned order dated 10.9.2001 passed by R-3 was in continuation of first detention order and pursuant to Supreme Court judgment so as to make petitioner undergo the unexpired detention period or whether it was new and second detention order passed in a fresh exercise though on the strength and basis of old material and grounds of detention of first order.

10. We have no doubt in our mind that impugned detention order was passed pursuant to Supreme Court judgment dated 9.7.2001 and was aimed at subjecting petitioner to undergo unexpired detention period of five months and two days which had remained otherwise unserved upon quashment of detention by the High Court.

11. It is true that Supreme Court had not specifically directed passing of the impugned order in its judgment (supra) but it had certainly left it open to the detaining authority (R-2) to decide on this and if the authority had done so in its wisdom, its decision could not be called in question on the grounds which were available to the detenu only in a case where a fresh detention order was passed on the basis of any old material or grounds of for lack of satisfying any procedural safeguards.

12. The impugned order thus was a continuation of the first detention order backed up by its material, grounds and comments and the observance of procedural safeguards which all had received a seal of approval by the Supreme Court vide judgment dated 9.7.2001. the question of non-communication of grounds or non-supply of reliable documents or non-observance of any procedural requirements in respect of this order, Therefore, did not arise.

13. It seems to us that petitioner was suffering from some misconception about the nature of impugned detention order. He seems to be treating it as the second order of detention passed on the grounds of first order and believes that it was vitiated on that count and for non-observance of other statutory requirements. His plea would have been in order if the impugned order was a new order. But that was not so and this order was in practical terms a continuation of the first

order directed to subject petitioner to serve the unexpired detention period which he had availed of under the over-ruled orders of the High Court. His whole case, Therefore, appears misconceived and misdirected and so is his plea for re-convening of the Advisory Board second time for consideration of his representation against impugned order, even though if it was accepted that it contained new material.

14. As it is, there was no obligation cast on the appropriate Government to refer his representation to the Advisory Board all over again for consideration of some alleged new material. Such obligation was imposed on the Government only u/s 10 of National Security Act (NSA) 1980 and in the circumstances provided there and in the first instance, three weeks after passing the detention order.

15. This becomes clear on going through the provisions and its underlying Scheme. Section 9 of the Act provides for the constitution of Advisory Boards and Section 10 for making a reference to such Advisory Board by placing before it the grounds of detention and representation, if any, made by the detenu for its opinion and report to enable the Government to take further action on it. Section 11 lays down the procedure to be followed for this and Section 12 authorises the Government to take appropriate action in the matter depending upon the report of the Board.

16. Section 10 which is material for our purpose provides thus:

"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."

17. This provision makes it obligatory for the Appropriate Government to place the grounds of detention and representation, if any, made by the detenu and the report of the officer under Sub-section 4 of Section 3 of the Act before the Advisory Board within three weeks from the date of the detention. Once the Government discharges this, there is no further duty cast on it to make any further reference or to place any fresh representation made by the detenu before the Board even though containing some new material. It is a different matter that the appropriate Government may do so on its own in the facts and circumstances of the case but the scheme of the Act and its provisions do not mandate re-convening of the Advisory Board on the asking of the detenu and for consideration of his representation. Nor does Government's failure to do so, furnish any ground for invalidating the detention.

18. We have examined the two Supreme Court judgments relied upon by Ld. counsel for petitioner. But we have not been able to find these laying down any

such proposition that it was obligatory for the appropriate Government to convene the Advisory Board at the drop of hat and to refer to detenu's second or the subsequent representation to it for consideration on the basis of any new material. These judgments also leave the matter to be decided by such Government.

19. All this obviates the necessity to examine the other pleas raised by Id.ASG Mr. Sud for which he can always await some appropriate opportunity.

20. This petition accordingly fails and is dismissed.