
(2003) 08 AHC CK 0229

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 20304 of 2003

Mohd. Anees alias Guddu (in Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

National Security Act, 1980 — Section 8

Citation : (2003) 3 ACR 2659 : (2004) 1 RCR(Criminal) 499

Hon'ble Judges : S.K. Agarwal, J;Ghanshyam Dass, J

Bench : Division Bench

Advocate : A.K. Bajpai and U.N. Sharma, for the Appellant; B.N. Singh, S.S.C., J. Lal, A.S.C., K.S. Yadav and A.K. Tripathi, for the Respondent

Judgement

S.K. Agarwal and Ghanshyam Dass, JJ.—We have heard Sri Anil Kumar Bajpai, learned Counsel for the Petitioner, on behalf of the State Sri A. K. Tripathi, learned A.G.A. and Sri K. S. Yadav, learned Counsel for the Union of India.

2. The sole question that was raised before us by the Petitioner in this petition for our consideration is that the representation, duly forwarded by the Government of Uttar Pradesh with a covering letter, was returned by the Central Government without considering the same to the State Government for its determination u/s 8 of National Security Act (hereinafter referred to as "Act"). The representation was also sent to the Central Government by the District Magistrate, Allahabad. The contention, therefore, is that the Central Government had failed to discharge its obligation as enjoined upon it by Section 14 of the Act. We have applied ourselves appropriately to the issue at hand. In our opinion, the contention has sufficient force. The detenu had supplied 7 copies of his representation to the Superintendent of Jail as accepted by him in his counter-affidavit in paragraph 6. A copy of the representation is annexed alongwith the petition as Annexure-2. The representation was handed over to the Superintendent on 12.9.2002. According to this paragraph, it was addressed to the President of India, Secretary (Home), Central Government, New Delhi,

Governor of the State, Chairman, Advisory Board, Chief Minister and the District Magistrate, Allahabad. At serial No. 2 at the foot of the representation, there is a mention of this fact. It is clear that the Petitioner had the intention to address one of his representation to the Secretary (Home Affairs), Government of India. The District Magistrate in his counter-affidavit in paragraph 5 had also admitted this fact that he had forwarded the representation of the detenu to the Central Government on the same day, i.e., 13.9.2002, through speed post. In the counter-affidavit filed by Sri C. P. Singh, Dy Secretary (Home and Confidential), Government of U. P., Lucknow in paragraph 3, it has been alleged that the representation of the Petitioner was forwarded to the Central Government by a letter dated 24.9.2002. The Ministry of Home Affairs, New Delhi, vide its letter dated 25.9.2002 promptly returned the said representation to the State Government with a remark that "the representation of the Petitioner was not addressed to the Central Government and so the representation be disposed of by the State in accordance with the provision of Section 8 of the Act." From paragraph 5 of the counter-affidavit of this Officer, it is further made available to us that this representation forwarded to the Central Government was received by the Secretary, Ministry of Home Affairs, New Delhi on 10.9.2002, i.e., within 7 days from the date of approval by the State Government as required u/s 3(5) of the said Act.

3. In view of abovesaid facts and circumstances and the fact that the representation endorsed by the Petitioner clearly indicated his desire for his representation to be considered by the Central Government as well. It is clearly explicit from Sl. No. 2 at page 32 of the representation as appended to this writ petition. From these facts, it is clearly over-flowing that the authority who directed the return of the representation to the State Government for its decision u/s 8 of the Act had completely shut his eyes to this part of the representation. Had any application of mind been made by the authority concerned at the Central Government's end probably this unholy mistake may not have occurred. This shows that lapse of application of mind on the part of the official at the Ministry of Home, Government of India, who entertained the same. The abovesaid conduct has resulted into miscarriage of justice so far as the Petitioner is concerned. It was incumbent upon the Government of India to consider the representation forwarded by any detenu or by the State Government on his behalf and decide the same as required u/s 14 of the Act. Thus, the legal obligation was not discharged by the Central Government in the case of this detenu. There is no averment in the Union Home Ministry's counter-affidavit whether the representation forwarded to it by the District Magistrate was disposed of or not. This is yet another anomaly.

4. It is needless to remind that any obligation enjoined by any law has to be discharged in true manner as prescribed. There must not be adhered an approach or attitude which may give an exposure to cursorines or weakness of the authority or the Government. Such an approach or attitude is to be seriously deprecated.

5. In view of the abovesaid facts and circumstances, in our opinion, this petition deserves to be allowed. The petition is accordingly allowed and his continued detention under the said Act is hereby quashed. The Petitioner shall be released forthwith, if he is not otherwise detained in any other offence.

6. A copy of this order shall be sent immediately to the Secretary (Internal Security, Home Affairs), State of U.P. and also to Union of India.