
(2011) 05 AHC CK 0083

In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus Writ Petition No. 64567 of 2010

Mohd. Saheem

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 24-05-2011

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 10, 12(1), 3(2)
Penal Code, 1860 (IPC) — Section 489B, 489C

Citation : (2011) 6 ADJ 750 : (2011) 5 AWC 4838 : (2011) 8 RCR(Civil) 1759

Hon'ble Judges : S.C. Agarwal, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for Petitioner, Sri J.K. Sisodia, learned A.G.A. for the State and Smt. Raj Kumari Devi, learned Counsel for Union of India. Counter and rejoinder affidavits have been exchanged between Petitioner and respective Respondents.

2. The instant habeas corpus petition has been filed challenging the detention order dated 6.8.2010 passed by the District Magistrate, Kushi Nagar detaining the Petitioner u/s 3(2) of National Security Act, 1980 (hereinafter referred to as the "Act"), which was confirmed by order dated 22.9.2010 passed by the State Government in exercise of powers u/s 12(1) of the Act.

3. On 21.6.2010, an F.I.R was registered against the Petitioner as case crime No. 592 of 2010 under Sections 489-B, 489C Indian Penal Code at P.S. Kasaya, District Kushi Nagar with the allegation that 417 currency notes of Rs. 20 denomination totalling Rs. 9420/-, which were counterfeit, have been recovered from the possession of the Petitioner, who was involved in circulation of these fake Indian currency notes with inter-state ramifications.

4. After the detention order dated 6.8.2010 was passed, Petitioner was served

with the same on the same day at the District Jail, Kushi Nagar where he was detained. The detention of the Petitioner under the Act has been made pursuant to the said crime.

5. Learned Counsel for the Petitioner has raised no argument challenging the legality of the detention of the Petitioner on merits. The Petitioner made a representation on 23.8.2010 through the Jail Superintendent to various Authorities. On 23.8.2010, the representation of the Petitioner reached before the District Magistrate, Kushi Nagar, who forwarded the representation of the Petitioner along with his comments on 28.8.2010 after obtaining reports from police authorities, which was received by the State Government on 30.8.2010. The representation of the Petitioner was rejected on 7.9.2010 by the State Government after due consideration. The State Government forwarded the representation to the Central Government on 31.8.2010, which was received by the Central Government on 8.9.2010. However, after duly considering the order of detention and grounds for the same, the representation was thereafter rejected by the Central Government on 10.9.2010.

6. Learned Counsel for the Petitioner has raised the following submissions:

(i) The detention of the Petitioner was illegal as the District Magistrate only sent the copy of the representation to the State Government and did not forward the same directly to the Central Government, which resulted in some delay. Hence, there is a violation of Article 22(5) of the Constitution of India.

(ii) As the representation dated 23.8.2010 was made after the matter had already been referred to the Advisory Board on 12.8.2010 and the State Government had also made the reference to the Advisory Board on 12.8.2010 u/s 10 of the Act, the detaining authority was required to consider the representation before sending the same to the Advisory Board, but in the instant case, the detaining authority had forwarded the representation to the Advisory Board on 28.8.2010. The State Government has forwarded the representation to the Advisory Board on 31.8.2010 and it was rejected by the State Government on 7.9.2010. Thus it was argued that there was violation of the directions of the Apex Court as held in the case of Haradhan Saha v. State of West Bengal and Ors., 1974 SCC (Cri.) 816 (Para 29).

(iii) The District Magistrate has not himself rejected the representation and simply forwarded it to the State Government. Reliance has been placed on the decision of a Division Bench of this Court in the case of Indrish v. Secretary, Ministry of Home Affairs, Govt. of India, New Delhi, 2002 (2) JIC 65.

7. Learned A.G.A., on the other hand, argued that it is not mandatory for the District Magistrate to forward the copy of the representation to Central Government also. He is only required to act with promptitude. Secondly, the case of Haradhan Saha (supra) referred by the Petitioner has been clarified by the Apex Court in the decision of the Apex Court in K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and

Others, wherein it has been held that there is no obligation that the representation needs to be first rejected by the State Government before it is forwarded to the Advisory Board if the representation is received after the case was referred to the Advisory Board. The case of Indrishi (supra) was specifically considered by a full Bench of this Court in *Km. Indu Mishra v. Union of India and Ors.* (Habeas Corpus Writ Petition No. 35555 of 2020 decided on 26.11.2010). In this case, it has been held that the District Magistrate has no power to revoke or modify the detention order passed by him after it is approved by the State Government and in the present case, the detention order had been approved by the State Government on 12.8.2010, therefore, the District Magistrate could not be obliged to decide the representation. It was received after the approval by the State Government and the District Magistrate committed no illegality in not deciding the representation after its approval.

8. On examining the contentions raised by learned Counsel for the parties, so far as the first submission of the learned Counsel for the Petitioner is concerned, there is no mandate in law and no decision was referred to by the Petitioner for the proposition that the District Magistrate is obliged to send the copy of the representation also to the Central Government. Article 22(5) of the Constitution only provides that there should be promptitude and no undue delay in disposal of the representation. The Petitioner could not indicate any undue delay in disposing of the representation by the Central Government or in its treatment at earlier stages in the present case. Also, as soon as the State Government received the representation from the District Magistrate on 30.8.2010, it forwarded the same to the Central Government on 31.8.2010. It reached the Central Government on 8.9.2010 and it was rejected by the Central Government within two days i.e. on 10.9.2010. Therefore, there was no undue laches at this stage and the detention order cannot be set-aside on this ground.

9. So far as the second submission of the Petitioner, for which he relied on the following lines of the case of Haradhan Saha (supra):

If a representation is made after the matter has been referred to the Advisory Board, the detaining authority will consider it before it will send representation to the Advisory Board.

These lines have been examined in the subsequent Constitution Bench Decision in the case of *KM. Abdulla Kunhi and Anr.* (supra) in paragraph 20 wherein it has specifically been observed that after considering the entire concept of quality on the subject that only promptitude is required in dealing with the representation and it cannot be invalidated solely on the ground that the representation is considered subsequent to confirmation of the detention. Therefore, there is no obligation on the State Government to first dispose of the representation made by the detenu, which is received after the matter has been referred to the Advisory Board unless there is no undue delay in disposal of the same and no such allegations have been made in the contention raised by the Petitioner. There was no undue delay by the State Government. The detention order cannot be set-

aside only on the ground that the representation was disposed of by the State Government after it had been forwarded to the Advisory Board.

10. As far as the third submission of the Petitioner that the District Magistrate is bound to consider and dispose of any representation made by him, it has specifically been held in a full Bench decision of this Court in the case of Km. Indu Mishra (supra) in paragraphs 38 (3) & (4) that

the District Magistrate/Detaining Authority does not have power to revoke or modify the detention order passed by him after it is approved by the State Government. The District Magistrate/Detaining Authority is not obliged to consider and decide the representation after approval of the detention order by the State Government.

11. In this view of the matter, it is apparent that the detention order had been approved by the State Government on 12.8.2010 whereas the representation was received by the District Magistrate only on 23.8.2010. After the said approval, there was no mandate on the District Magistrate to consider and decide the representation of the Petitioner.

12. For the foregoing reasons, we see no merit in the habeas corpus writ petition. It is accordingly dismissed.