
(2000) 09 AHC CK 0037
In the Allahabad High Court
Case No : Habeas Corpus W.P. No. 27252 of 2000

Nawab Dulha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Constitution of India, 1950 — Article 22, 22(1), 22(5)
National Security Act, 1980 — Section 3(2), 8

Citation : (2001) CriLJ 390

Hon'ble Judges : P.K. Jain, J;Lakshmi Bihari, J

Bench : Division Bench

Advocate : P.C. Srivastava and D.S. Misra, for the Appellant; K.N. Pandey, A.G.A. and Mahendra Pratap Singh, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—By means of the present writ petition, the petitioner has challenged the detention order dated 25-4-2000 as contained in Annexures-1 and 2 to the writ petition, said to have been served upon the petitioner on 30-4-2000. The impugned order against him was passed by respondent No. 3, the District Magistrate, Udham Singh Nagar u/s 3(2) of the National Security Act, 1980. He has also challenged his continued detention under the said order and has prayed to set at liberty forthwith by issuing a writ, order or direction in the nature of Habeas Corpus.

2. Originally, the petitioner had impleaded five respondents including Superintendent of Police, Udham Singh Nagar. However, on oral prayer of petitioner, respondent no 4 was permitted to be deleted and respondent No. 5 Jail Superintendent, District Jail Rampur was renumbered as respondent No. 4, Counter-affidavits have been filed by four respondents. The petitioner's counsel expressed his desire not to file any Rejoinder affidavit. We have, therefore, heard Sri D.S. Mishra, learned counsel for petitioner. Sri Mahendra Pratap Singh, learned Additional Government Advocate appearing for respondents Nos. 2, 3

and 4 and Sri Kamlesh Narain Pandey appearing for respondent No. 1.

3. Learned counsel for the petitioner has challenged the impugned detention order and continued detention of the petitioner thereunder on the grounds- (i) that there was unexplained inordinate delay on the part of the State Government respondent No. 2 in disposal of the petitioner's representation made on 17-5-2000; (ii) the detention order did not apprise the petitioner of the right that the representation by the detenu against the order can also be made before the District Magistrate, the Detaining Authority; and (iii) the representation was not placed before the Advisory Board. Sri Mahendra Pratap Singh has fairly conceded that there was delay in disposal of the representation by the respondent No. 2, which has not been explained in the counter-affidavit.

4. Sri V.B. Saxena, Jailor, District Jail, Rampur, where the petitioner is detained, has admitted in his counter-affidavit that the detention order dated 29-4-2000 was received in the jail on 30-4-2000 and was served upon the petitioner the same day. It is also stated that the petitioner submitted his representation on 17-5-2000 to the District Magistrate, Rampur through jail authorities. The representation was rejected by the State Government and message was sent through radiogram dated 10-6-2000 and after the same was received the jail authorities informed the petitioner about rejection of his representation. It is also stated that the Central Government rejected the representation of the petitioner and radiogram message dated 26-5-2000 was received and the petitioner was informed. It was further stated in his counter-affidavit that the government approved the detention order and sent the radiogram message on 10-6-2000 which was conveyed to the petitioner by jail authorities after it was received. The State Government confirmed the detention order for a period of 12 months from the date of detention and sent message dated 1-8-2000 and the said message was conveyed to the petitioner by the jail authorities.

5. Respondent No. 3 Sri Narendra Bhushan, the then District Magistrate, Udham Singh Nagar, Detaining Authority has stated that the detention order was passed by the deponent against the petitioner on 24-4-2000 and the same was served upon the petitioner on the same date through jail authorities; that the detention order was passed by respondent No. 3 on sufficient grounds as detailed in the counter-affidavit as well as the detention order. The counter-affidavit filed by the District Magistrate, respondent No. 3 is, however, silent on the question as to when the representation of the petitioner was received by the respondent No. 3 and how it was dealt with him and when the same was forwarded by him to the State Government.

6. Sri R.A. Khan, Under Secretary to the Government of Uttar Pradesh, respondent No. 2, has stated in the counter-affidavit that the petitioner's undated representation addressed to the Home Secretary, U.P. Lucknow forwarded by the Superintendent, District Jail, Rampur on 17-5-2000 was received in the concerned Section of the State Government on 29-5-2000, much after the conclusion of hearing of the petitioner's case on 18-5-2000. Since the

Advisory Board had already concluded the hearing on 18-5-2000 and it had given its report on 24-6-2000, there was no justification for sending the copies of the representation to the Advisory Board. Since the representation dated nil was addressed only to the Home Secretary, U.P. Lucknow and not to the Central Government, the State Government had not sent the representation to the Central Government. It was stated that the concerned file was in submission for higher orders on the report of the Advisory Board till 31-5-2000. The file was received back in the concerned Section on 1-8-2000 and the concerned Section of the State Government examined the representation and submitted a detailed note on 2/3-6-2000. Sunday dated 4-6-2000 was intervening and the deponent examined the representation and the note on 5-6-2000. The Special Secretary also examined it on 5-6-2000 and thereafter it was submitted to the Secretary, Home and Confidential Department who examined it on 6-6-2000 and submitted it to higher authorities for final orders of the State Government. After the consideration, the said representation was finally rejected by the State Government on 8-6-2000. The rejection of the representation was communicated to the petitioner through district authorities by the State Government radiogram dated 9-6-2000. The facts thus show that the representation of the petitioner was decided expeditiously.

7. The respondent No. 1, Union of India, filed an affidavit of Sri Sushil Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, where it was stated that the relevant authority for disposal of the representation was State Government. However, as the detenu addressed the representation to the Central Government, it was disposed of on merits. The representation from the detenu was received by the Central Government in the concerned desk of Ministry of Home Affairs on 24-5-2000. It was immediately processed for consideration and the case of the detenu was put up before the Deputy Secretary, Ministry of Home Affairs on 24-5-2000, who carefully considered the same and with her comments put up the same before the Joint Secretary, Ministry of Home Affairs on 25-5-2000, the same day. The Joint Secretary after considering the case forwarded the same to the Union Home Secretary on 25-5-2000 and the Home Secretary, who has been delegated with the powers by the Union Home Minister to deal with such cases, considered the case of the detenu and rejected the representation on 25-5-2000. The decision of the Central Government was communicated to the Government of Uttar Pradesh and Superintendent, District Jail, Rampur through crash wireless message on 26-5-2000 and thus there was no delay on the part of the Central Government, who quickly disposed of the representation.

8. Before we proceed further, it is significant to point out that the sacred idea behind Section 8 of the National Security Act is that the detenu must have the earliest opportunity of making the representation against the detention order to the Appropriate Authorities which also includes the disposal of the representation at the earliest possible. The duty is cast on the authorities concerned to take all possible steps for consideration of the representation of the detenu at the

earliest possible without any undue loss of time. When the question of liberty of citizen is involved and that too by means of the preventive detention, it is incumbent upon the authority to explain delay in consideration of the representation. Every possible step is required to be taken by each part of the machinery concerned to facilitate and ensure earliest decision on the representation made by the detenu. Various pronouncements of the Apex Court as also of various High Courts have reminded the executive authorities of their obligation and duty under the Constitution of India to guard the liberty of the citizen but it appears that continued message given by the Courts in this regard is not percolated to Executive authorities and their methods of acting in most casual manner have not changed. We may refer to the observation of the Apex Court in the case of K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, , wherein a Constitution Bench of the Court held as follows (para 12) :-

It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. But the time imperative for consideration of representation can never be absolute or obsessive. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. It depends upon the facts and circumstances of each case, upon the necessities and the time at which the representation is made. The requirement is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

9. Having given our anxious consideration to the material before us, we find that there is no denying of the fact that a representation was made by the petitioner which was forwarded by respondent No. 4 on 17- 5-2000 to the District Magistrate Rampur, as stated by the respondent No. 4 in paragraph No. 4 of his counter-affidavit. There is no averment in the counter-affidavit filed by respondent No. 4 that the representation made by the petitioner addressed to the State Government and Central Government were also forwarded to the District Magistrate, Rampur or to the respondent No. 3 District Magistrate, Udham Singh Nagar, who was the detaining authority in the instant case. How and when the District Magistrate, Rampur sent the representation to the detaining authority, respondent No. 3 or the State Government is not at all explained in the counter-affidavit filed by respondent No. 3, the District Magistrate Udham Singh Nagar or the counter-affidavit filed by Sri R. A. Khan on behalf of State of Uttar Pradesh, respondent No. 2. In paragraph No. 4 of the counter-affidavit filed on behalf of respondent No. 2, only this much is stated that the copy of the representation addressed to the Home Secretary, Uttar Pradesh, Lucknow was forwarded by Superintendent, District Jail, Rampur on 17-5-2000 which was received in the concerned Section of the State

Government, U.P. on 29-5-2000 whereas the counter-affidavit filed by respondent No. 4 states that the representation was forwarded to the District Magistrate, Rampur and there is no averment that any representation or copy thereof was forwarded by the respondent No. 4 to the State Government directly. Thus it is mystery as to what happened to the representation, which, according to respondent No. 4, he had forwarded to the District Magistrate, Rampur. How and through whom the representation to the State Government was routed is also shrouded in mystery. Neither respondent No. 4 nor respondent No. 3 and even respondent No. 2 have not explained as to when the representation was received by the State Government in the receipt section. The counter-affidavit filed by respondent No. 2 speaks only of its receipt in the concerned section of the State Government on 29-5-2000. If the representation was sent by Special messenger, it ought to have been received in the receipt section of the State Government latest by 19th May, 2000 and if it was sent by post, it ought to have reached the receipt section of the State Government or the concerned department within three four days of its dispatch. The representation was taken up by the State Government for examination through concerned section of the State Government on 2/3-6-2000 and it was disposed of on 8-6-2000. The period between the date of receipt of the representation (which has been concealed in the counter-affidavit) till 2/3-6-2000 which is unexplained. The facts stated above clearly disclose that the authorities, respondent Nos. 4, 3 and 2 have taken a very casual and callous approach towards the representation of the petitioner. Respondents No. 3 and 4 have specially failed to state as to how the various representations made by the petitioner were dealt with by them. Respondent No. 4 has stated that the representation was given to the District Magistrate, Rampur whereas the respondent No. 2 in his counter-affidavit filed through Sri R.A. Khan had stated that the representation of the petitioner was received by concerned section of the State Government directly from the Superintendent, District Jail, Rampur. On the other hand, the counter-affidavit filed by the respondent No. 3 is absolutely silent with regard to the representation made by the petitioner. We may also observe that on going through counter-affidavit filed by respondent No. 3, we feel that the respondent No. 3 has signed it without going through the counter-affidavit which has been prepared in the most casual manner. The detention order was admittedly passed on 29-4-2000 and was served upon the petitioner on 30-4-2000 whereas paragraph No. 4 of the counter-affidavit filed by respondent No. 3 states that the order was passed on 24-4-2000 and was served upon the petitioner the same day. There are so many grammatical and spelling mistakes in the counter-affidavit which lead to no other inference except that Sri Narendra Bhushan, the then District Magistrate, Udham Singh Nagar/detaining authority has signed the counter-affidavit without going through it.

10. In view of the facts stated above, we find that in the present case, the requisite care has not been taken by the respondents No. 2 to 4 to strictly observe a mandate enshrined in Clause 5 of Article 22 of the Constitution of

India as declared by the Apex Court and various High Courts through their judicial pronouncements. This alone, in our view, renders the continued detention of the petitioner to be illegal and the petitioner is entitled to the reliefs claimed.

10A. We have gone through the impugned order of detention as contained in Annexures-1 and 2. We find that the petitioner has been informed of his constitutional right to make a representation to the State Government, to the Advisory Board and to the Central Government. However, he has not been informed of his right to make a representation to the detaining authority which is also violation of the constitutional mandate. In the case of State of Maharashtra and Others Vs. Santosh Shankar Acharya, , the detention order was passed not by the State Government but by the concerned officer empowered by the State Government under Sub-section (2) of Section 3 of the Act.

11. It is also not disputed that while communicating the detenu the grounds of detention it has not been indicated therein that the detenu has right to make a representation before Detaining Authority, though in the said communication it was mentioned that the detenu can make a representation to the State Government as provided u/s 8(1) of the Maharashtra Act, Bombay High Court dealing with Habeas Corpus writ petition, held that failure on the part of the Detaining Authority in a case where order of detention is issued under Sub-section (2) of Section 3 to the detenu that he has a right to make a representation constitutes an infraction of the rights guaranteed under Article 22(5) of the Constitution and as such, the detention becomes invalid on that score. Hon'ble Supreme Court after considering the various provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 read with Section 3(2), (3), Sections 14 and 8 and Article 22(1) of the Constitution of India held as follows (para 5) :-

The only logical and harmonious construction of the provisions would be that in a case where an order of detention is issued by an officer under Sub-section (2) of Section 3 of the Act, notwithstanding the fact that he is required to forthwith report the factum of detention together with the grounds and materials to the State Government and notwithstanding the fact that the Act itself specifically provides for making a representation to the State Government u/s 8(1), the said Detaining Authority continues to be the Detaining Authority until the order of detention issued by him is approved by the State Government within a period of 12 days from the date of issuance of detention order. Consequently, until the said detention order is approved by the State Government the Detaining Authority can entertain a representation from a detenu and in exercise of his power under the provisions of Section 21 of Bombay General Clauses Act could amend, vary or rescind the order, as is provided u/s 14 of the Maharashtra Act. Such a construction of powers would give a full play to the provisions of Section 8(1) as well as Section 14 and also Section 3 of the Maharashtra Act. This being the position, non-communication of the fact to the detenu that he could make a

representation to the Detaining Authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under Sub-section (2) of Section 3 of the Maharashtra Act would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, would apply notwithstanding the fact that in Kamlesh Kumar's case (supra) the Court was dealing with an order of detention issued under the provisions of COFEPOSA.

12. In the instant case, the undisputed fact is that the impugned detention order was approved by the State Government on 8-5-2000 and the order of approval was communicated to the petitioner through radiogram on 9-5-2000. Till that date the petitioner had a right to make a representation to the Detaining Authority also. Therefore, it was incumbent upon the respondent No. 3 to have communicated to petitioner of his right to make a representation to the detaining authority also while serving the detention order as contained in Annexures-1 and 2 upon the petitioner. The respondent No. 3 having failed in observing constitutional mandate, the order of detention passed by the said authority as approved by the State Government cannot be sustained and the continued detention of the petitioner under such order would be rendered to be illegal.

13. We do not feel it necessary to deal with the other submissions made on behalf of the petitioner.

14. For the foregoing reasons, this writ petition is allowed and the continued detention of the petitioner is found to be illegal. Respondents are directed to set petitioner at liberty forthwith, if he is not required to be detained in connection with any other case.

No order as to costs.