
(2003) 12 AHC CK 0073
In the Allahabad High Court
Case No : Writ Petition No. 557(HC) of 2003

Pradeep Dutta

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)

Citation : (2003) 12 AHC CK 0073

Hon'ble Judges : Vishnu Sahai, J and Kamal Kishore, J

Final Decision : Disposed Of

Judgement

Vishnu Sahai, J.—Through this writ petition, preferred under Article 226 of the Constitution of India, the petitionerdetenu Pradeep Dutta has impugned the order dated 10122002, issued by Mr. C.P. Singh, Deputy Secretary, Home and Confidential Department. State of U.P. (opposite party No. 1) on behalf of the Government of U.P. with the permission of the Governor of U.P., detaining him under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The detention order alongwith the grounds of detention, which are also dated 10122002, was served on the petitionerdetenu on 13 122002 and their copies have been annexed as Annexure Nos. S.A. 1 and S.A. 2 respectively to the supplementary affidavit, dated 12112003, filed by Smt. Charu Dutta a relative and Pairokar of the petitionerdetenu.

2. The prejudicial activities of the petitionerdetenu prompting the detaining authority to issue the impugned detention order against him are contained in the grounds or detention (Annexure No. S.A. 2). Since, in our view, a reference to them is not necessary for the adjudication of the pleadings confined in paragraph 10 of the petition and Ground (1) or paragraph 27 thereof, on which alone this writ petition deserves to succeed we are not adverting to them.

3. We have heard learned counsel for the parties.

4. In paragraph 10 of the petition and Ground (1) or para 27 thereof it has been averred that the petitionerdetenu made a representation to the State Government as well as the Union of India (Ministry of Finance) on 1522003. The said representation was decided after an inordinate delay (on 652003) violating the fundamental right guaranteed to the petitionerdetenu by Article 22 (5) of the Constitution of India. However, during the course of his submissions Mr. A. P. Mishra, learned counsel for the petitionerdetenu restricted his challenge to the delay in the disposal of the representation by the Union of India.

5. The averments contained in paragraph 10 of the writ petition and Ground (1) of paragraph 27 thereof, have been replied to in paragraphs 6 and 7 of the affidavit of Mr. B. R. Sharma, Under Secretary, Government of India, Ministry of Finance, Department of Revenue New Delhi. The said paragraphs read thus :

?Para 6. It is submitted that the representation dated 1522003 addressed to the Secretary (Home), Gopan Anubhag5, Govt. of U.P., Lucknow who forwarded the same to the sponsoring authority i.e. Deputy Narcotics Commissioner Lucknow for their comments and copy endorsed to this office, was received on 33 2003. Since the comments were not received, sponsoring authority was reminded to expedite comments vide letter dated 214 2003.?

?Para 7. On receipt of comments from the sponsoring authority on 3042003, the representation with the comments thereon was processed and submitted to the competent authority on 152003 who considered the representation on behalf of the Central Government and rejected the same on 652003, Shri Pradeep Dutta was informed of the rejection of his representation vide Memo on the same day which was acknowledged by the detenu on 14 52003.?

6. A perusal of paragraphs 6 and 7 of the return of Mr. B. R. Sharma would show that the representation of the petitioner detenu, dated 1522003, was received by the Deputy Narcotics Commissioner, Lucknow (sponsoring authority) on 332003 and since the comments were not received, the sponsoring authority was reminded to send them expeditiously vide letter dated 2142003. In our judgment, the delay (sic) on the part of the Officers of Union of India in not sending reminders much earlier is unpardonable and manifests, their utter insensitivity to the promptitude, with which a representation in a prevention detention matter had to be dealt with. In our view, the delay between 332003 and 2142003 is inordinate and alone is sufficient to vitiate the continued detention of the petitioner detenu.

7. Matters do not end here. We find further delay in disposal of representation of petitionerdetenu in the pocket between 15 2003 to 652003.

8. A perusal of para 7 of the return of Mr. Sharma would show that the representation of the petitionerdetenu alongwith the comments of the sponsoring authority was processed and submitted to the competent authority on 152003

but the same was only rejected by him on 652003. In the return, no reason has been mentioned as to why he did not attend to it on 252003, 35 2003, 452003 and 552003.

9. The Supreme Court in paragraph 5 of the oft quoted case of Harish Pahwa v. State of U.P., 1981 SC Cases (Cri) 589, has laid down that a representation in a prevention detention matter should be dealt with 'utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu.'

10. In our judgment the ratio laid down by the Apex Court in Harish Pahwa case (supra) has been violated and instead of the representation of the petitionerdetenu being continuously dealt with the same has been dealt with in the most callous/casual/cavilting manner. We are constrained to observe that the said manner only manifests the utter insensitivity of the concerned officers of the Union of India to the promptitude with which a representation in a prevention detention matter should have been dealt with.

11. It is well settled that implicit in the fundamental right guaranteed to the detenu by Article 22 (5) of the Constitution of India to prefer a representation at the earliest opportunity is also implicit the obligation on the authority to which the representation has been preferred to dispose off the same with the same promptitude.

12. For the aforesaid reasons, in our view, the pleading contained in paragraph 10 of the writ petition and Ground (1) of paragraph 27 thereof i.e. the inordinate delay on the part of the Union of India in disposal of the representation of the petitionerdetenu has violated the fundamental right of the petitionerdetenu, guaranteed by Article 22 (5) of the Constitution of India has pregnant with merit.

13. In the result, we allow this writ petition and direct that petitionerdetenu Pradeep Dutta be released forthwith unless wanted in some other case.