

(2000) 04 OHC CK 0046
In the Orissa High Court
Case No : O.J.C. No. 13483 of 1999

Raindara Kumar Mohanty alias Bada Kairu	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 03-04-2000

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 10, 14, 3(2), 3(5)

Citation : (2000) 18 OCR 707

Hon'ble Judges : P.C. Naik, J;B.P. Das, J

Bench : Division Bench

Advocate : S.N. Mohapatra, K.R. Mohapatra and S. Ghosh, for the Appellant;

Judgement

B.P. Das, J.—The Petitioner in this writ petition for habeas corpus challenges the order detaining him u/s 3(2) of the National Security Act, 1980 (in short, "the Act") 2. The case of the Petitioner is that the order of detention dated 29.5.1992 was passed by the District Magistrate. Sambalpur opposite party No. 2 (Annexure- I) and the grounds of detention both English and Oriya, were served on him on 30.5.1999. It is stated that the cases referred to in the grounds of detention relate back to 1995. 1998 and 1997 and the same were stale cases and that there is no nexus between those cases and the impugned order of detention. Further the offences alleged in those cases were directed against some individuals. In other words, the Petitioner tries to make out a case that the allegations made therein purely relate to law and order and not public order. The other ground on which the impugned order of detention is challenged is that while the order of detention was passed on 29.5.1999, approval thereof was obtained from the State Government on 10.6.1999, i.e. on the 13th day of his detention and therefore, it is contrary to the statutory provisions. He further urges that the authorities did not specifically make him aware as to making of a representation and therefore, the Petitioner could not make an effective representation, for which he submitted a representation at a belated stage on 15.6.1999 to the Jail Superintendent, addressed to the District Magistrate,

Sambalpur. It is alleged that even though representation was duly submitted for a quite long period he was not informed as to whether his representation was forwarded to the appropriate Govt. and particularly to the Central Govt. However, the Petitioner argues that the order of detention has become invalid because of the reason that the matter was placed before the Advisory Board on 12.7.1999, which is beyond the statutory period of three weeks from the date of detention. The State Govt. has rejected the representation on 19.7.1999. It is submitted that the Petitioner is yet to know regarding the fate of his representation so forwarded to the Central Govt. Hence, the delay in disposal of the representation affects the right of the Petitioner under Article 22(5) of the Constitution of India and therefore, the order of detention is not maintainable and is liable to be set aside.

3. During the course of argument, learned Counsel for the State while defending the impugned order of detention produced the records and brought to our notice that the Petitioner was detained u/s 3(2) of the Act first in the year 1991 and the said order of detention was challenged in this Court in O.J.C. No. 6447 of 1991 which was ultimately dismissed by order dated 3.7.1992. The Petitioner was again put under detention in 1993 u/s 3(2) of the At and was released on 21.9.1994 on expiry of the statutory period of 12 months.

4. We have gone through the grounds of detention and have carefully considered the contention of the Petitioner to the effect that the ground on which the detention order was made is invalid because some stale cases of the years 1995, 1998 and 1997 were referred. Be that as it may, these cases were preferred by the detaining authority with a view to highlight the antisocial activities of the Petitioner which were not curbed even after his detention on two previous occasions in 1991 and 1993 under the Act. Under ground Nos. 4, 5, 6, 7 and 8 some fresh incidents of antisocial activities of the Petitioner have been indicated which were done with more vigour and it appears therefrom that the Petitioner has indulged in commission of crimes again and again, and some times the Petitioner also indulged in criminal activities on being released on bail by the Courts of law. In spite of his detention twice under the Act, it appears that there was no sign of any change in the activities of the Petitioner and the grounds so indicated, in our view, are concerning public order. Hence the first contention of the Petitioner fails.

5. While going through the records we have come across that the Petitioner has been given an opportunity to make representation which has been clearly indicated in the grounds of detention. So, the allegation of the Petitioner that he was not specifically made aware as to the recourse to making representation is totally false on the face of the fact that the Petitioner during the year 1991 filed a writ petition and in 1993, as it appears from the records, filed representations and therefore, it cannot be said that it was necessary to make him specifically aware how to make a representation. In this view of the fact and taking the previous conduct of the Petitioner into consideration, we are satisfied that the

Petitioner, who is a jail-bird is aware of the niceties of legal provisions especially how to make a representation. The second contention of the Petitioner thereby fails.

The impugned order of detention was issued by the District Magistrate on 29.5.1999 but the detenu was actually detained with effect from 30.5. 1999 u/s 3(2) of the Act. The order was served on 30.5.1999. The order of detention was approved by the State Govt. on 10.6.1999. The aforesaid facts are borne out from the records as well as in the counter affidavits. So, the contention of the Petitioner that the approval order was passed by the State Govt. on 13th day of his detention does not hold good. Thus same is rejected.

6. Now, let us examine whether the allegation made by the Petitioner that his case was placed before the Advisory Board on 12.7.1999, which is beyond the statutory period of three weeks from the date of detention order, is correct or not. As it reveals from the counter affidavit that the Petitioner was detained under the Act with effect from 30.5.1999 and as required by Section 10 of the Act, the fact of detention was reported to the Advisory Board on 10.6.1999, which is within three weeks from the date of detention and the Advisory Board in its turn submitted report to the State Government vide its report dated 16.7.1999 which is within seven weeks as stipulated in the Act which has also not been disputed by the Petitioner. Hence, the plea of the Petitioner on the score is not sustainable.

7. The last and most vital allegation of the Petitioner is that his representation was not dealt with in an expeditious manner and as there is unexplained delay in disposal of the representation the impugned order of detention cannot be maintained. The learned Counsel for the State with reference to the record submits that the Petitioner's representation dated 15.6.1999 was received in the Home Department on 28.6.1999 and after careful consideration the same was rejected by the State Govt. on 16.7.1999. The Union of India has filed an affidavit wherein it has been stated that the State Govt. submitted a report as required by Section 3(5) of the Act in its letter dated 10.6.1999 which was received in the Ministry of Home Affairs on 21.6.1999 and on examination of the aforesaid report, the Central Govt. decided on 29.6.1999 that there was no necessity to interfere with the order of detention of the Petitioner and, there was no reason to revoke the same order of detention. The aforesaid act was done as envisaged u/s 3(5) and 14 of the Act. It has been categorically stated by the Central Govt. that no representation from or on behalf of the detenu has been received by the Ministry.

8. It appears from para 10 of the counter filed on behalf of the state that Petitioner's representation dated 15.6.1999 was received by the State Govt. on 28.6.1999. In para 7 of the writ petition, it has been stated that "the Petitioner-detenu not being aware of the modalities for making a representation finally submitted a representation to the Jail Superintendent addressed to the District Magistrate-opposite party No. 2 on 15.6.1999". Therefore, it is an admitted fact

that the Petitioner had not made any representation nor did he supply copies of the representation to be forwarded to the other authorities including the Central Government. We have already observed earlier that the plea of the Petitioner that he was not aware of the modalities, is not acceptable in view of the fact that against his earlier detention the Petitioner made effective representation and had also gone to the extent of filing writ petition challenging the order of his detention.

9. Now the question remains to be determined is whether there has been any delay on the part of the State Govt. In disposing of the representation. The representation was received in the Home Department on 28.6.1999 and the same was rejected on 16.7.1999. So far as the delay occurred between the period when the representation was handed over to the Superintendent, Sambalpur Circle Jail, who had forwarded the same to the District Magistrate, and the receipt of the same in the Home Department on 28.6.1999 is concerned, there is absolutely no explanation for the same. Similarly, the delay occurred in the hands of the State authorities had also not been explained because the State Government in its counter has stated that it received the representation from the District Magistrate on 28.6.1999 and rejected the same on 16.7.1999. Therefore, there has been a delay of 19 days in the hands of the State authorities.

10. In our considered opinion since there is no specific explanation about the delay in disposing of the representation the order of detention cannot be sustained. The order of detention is accordingly quashed and the writ application is allowed.

11. In this case even at the cost of repetition we reiterate that this is a case where the detaining authority has established beyond reasonable doubt, that public order is at jeopardy, but for the reason of delay considering the mandate of Articles 22(5) of the Constitution of India, we have no other option than to quash the order of detention. The State has miserably failed to explain the delay of 19 days. In other words, due to the failure on the part of the State to explain the delay the writ application was allowed on technical ground even though the case for detention has been made in the grounds of detention.

12. The Petitioner be set at liberty forthwith if his detention is not otherwise required in connection with any other proceedings.