

(1993) 03 DEL CK 0065

In the Delhi High Court

Case No : Criminal Writ Appeal No. 324 of 1992

Rajinder Singh

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Citation : (1993) 25 DRJ 462

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Maninder Singh, O.K. Bharti and P.S. Sharma, for the Appellant;

Judgement

Sat Pal, J.

(1) The petitioner was detained in terms of order dated 6-3-92 passed by the Commissioner of Police in exercise of powers conferred by sub-section (2) of Section 3 of the National Security Act, 1980 (for short called "NSA") as delegated to him vide Delhi Administration OrderNo.F.2/I/88-H.P.II dated 16.1.92 (copy of which is at page 22 of the paper book) read with order dated 17-3-92. Pursuant to the said order the petitioner was detained on 7-3-92.

(2) The petitioner submitted his representation dated 1-4-92 before the Advisory Board constituted under Nsa wherein it was prayed that the order of detention being vocative of constitutional right of the petitioner be quashed. On the recommendation of the Advisory Board another order dated 5-5-92 was issued whereby the petitioner was directed to be detained for a period of twelve months from the date of his detention i.e. 7-3-92.

(3) Though the order of detention has been challenged on various grounds mentioned in the writ petition, Mr. Maninder Singh, learned counsel for the petitioner, however, pressed only one contention which according to him is sufficient to quash the order of detention. The learned counsel for the petitioner drew my attention to ground (H) of the writ which reads as under:-

(4) "BECAUSE the representation of the petitioner dated 1-4-92 which was placed before the Advisory Board has not been considered by the detaining authority till date. The said non-consideration of the representation of the petitioner is a serious infraction/violation of rights of the petitioner under Article 22 (5) of the Constitution of India vitiating the detention order. The detention order is liable to be quashed on this ground alone."

(5) A counter affidavit has been filed on behalf of the respondents and a reply to ground (H) has been made in sub-para (J) of para 2. In this paragraph it has been submitted that copy of the representation stated to have been submitted before the Advisory Board by the petitioner was not supplied to the respondents and it was not obligatory on the part of the answering respondents to have: considered the. -representation of the petitioner made to the Advisory Board. In reply to the submissions made on behalf of the respondents, two affidavits of Shri S.S. Randhawa, advocate and Shri G.K. Bharti, advocate, who appeared "for the petitioner before the Advisory Board, have been filed Along with the rejoinder. In these affidavits it has been stated that a copy of the representation was given to the police officer concerned who appeared on behalf of the respondents to make submissions before the Advisory Board. The submissions made in these two affidavits have not been controverted by the respondents. Learned counsel for the petitioner, Therefore, contended that the order of detention was liable to be quashed as there was a clear violation of provision of Article 22(5) of the Constitution of India. In support of his contention learned counsel has placed reliance on a Supreme Court judgment in the case of Smt. Gracy Vs. State of Kerala and another, . He also relied on a judgment of a learned Single Judge of this Court in Crl. Writ No. 310/92 decided on 5.2.1993.

(6) Mr. Sharma, the learned Standing Counsel, appearing on behalf of the respondents contended that no representation was made by the petitioner to the detaining authority and as such the question of its consideration by the appropriate government did not arise.

(7) The question, Therefore, which requires consideration in this case is whether the detaining authority was not obliged to consider the representation simply because the same was addressed to the Advisory Board and not to the detaining authority. The answer to this question is found in the judgment of Supreme Court in the case of Smt. Gracy (supra). It will be relevant to reproduce the relevant portion from the said judgment which is as follows:-

"IT being settled that the aforesaid dual obligation of consideration of the detenu's representation by the Advisory Board and independently by the detaining authority flows from Article 22(5) when only one representation is made addressed to the detaining authority, there is no reason to hold that the detaining authority is relieved of this obligation merely because the representation is addressed to the Advisory Board instead of the detaining authority and submitted to the Advisory Board during pendency of the reference before it. It is difficult to spell out such an inference from the contents of Article

22 (5) in support of the contention of the learned Solicitor General. The contents of Article 22(5) as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of detention, the aforesaid dual obligation under Article 22(5) arises irrespective of the fact whether the representation is addressed to the detaining authority or to the Advisory Board or to both. The mode of address is only a matter of form which cannot whittle down the requirement of the constitutional mandate in Article 22 (5) enacted as one of the safeguards provided to the detenu in case of preventive detention."

(8) From the law laid down by the Supreme Court in the above mentioned case it is clear that once the detenu makes a representation either to the Advisory Board or to the detaining authority, such a representation has to be considered by the detaining authority independent of its consideration by the Advisory Board. From paragraph (j) of the counter-affidavit filed on behalf of the respondents, it is clear that the said representation was not considered by the detaining authority. Thus, there is a clear violation of the mandate given in Article 22(5) of the Constitution of India and as such the impugned order of detention is liable to be quashed.

(9) In view of the reasons given hereinabove I quash the impugned order of detention dated 6-3-92 and the petitioner is directed to be set at liberty, if not required to be detained in any other proceedings.