
(1995) 07 AHC CK 0143
In the Allahabad High Court
Case No : Hab. Corpus W.P. No. 11466 of 1995

Ram Veer alias Om Veer

APPELLANT

Vs

Superintendent, District Jail and Others

RESPONDENT

Date of Decision : 17-07-1995

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 11, 3(2)

Citation : (1995) 19 ACR 474

Hon'ble Judges : N.B. Asthana, J; Giridhar Malaviya, J

Bench : Division Bench

Advocate : Daya Shankar Mishra, for the Appellant; G.A., for the Respondent

Judgement

Giridhar Malaviya, J.—By this petition Petitioner Ram Veer has challenged the legality of his detention in district Jail, Moradabad in pursuance of an order dated 23.2.1995 passed by the District Magistrate u/s 3(2) of the National Security Act duly approved and subsequently confirmed by the Government. Generally speaking the grounds of detention allege certain activities of the Petitioner which, according to the District Magistrate, had disturbed the communal atmosphere of the city thereby disturbing the public order which necessitated passing of the order of detention against the Petitioner. However since no argument has been advanced on the correctness, legality or otherwise of the ground, it is not necessary to give a detailed account of the Petitioner's activities as mentioned in the ground.

2. The only point which has been argued by learned Counsel for the Petitioner before this Court is that the Petitioner had made a representation both to the State Government as also to the Central Government, but the said representation was not disposed of expeditiously by the Central Government, with result that continued detention of the Petitioner has been rendered bad in the eyes of law. This point was raised in paragraph 31 of the petition. Learned Counsel for the Petitioner has relied upon paragraph 4 of the counter-affidavit

filed by Sri. T.N. Srivastava on behalf of the State Government as also on paragraph 6 of the counter-affidavit filed by Ishwar Singh, Desk Officer, Ministry of Home Affairs, Government of India to substantiate this point.

3. In paragraph 4 of the counter-affidavit of Sri. T.N. Srivastava it is mentioned that the representation preferred by the Petitioner dated 15.3.1995 was received by the State Government on 28.3.1995 along with the comments of the District Magistrate. Moradabad dated 25.3.1995. The representation preferred by the Petitioner was also forwarded to the Central Government by the State Government. The paragraph further mentions that there was no delay in forwarding the same (representation) to the Central Government.

4. However, the counter-affidavit filed on behalf of the Central Government by Sri. Ishwar Singh, Desk Officer in paragraph 6, reads as follows:

6. The allegations made in the para No. 31 of the petition are denied being incorrect. It is stated that an incomplete representation dated 15.3.1995 from the detenu was received by the Central Government in the Ministry of Home Affairs on 17.5.1995 through the State Government. This representation was immediately processed for consideration and the State Government was requested to send a complete representation through a wireless message dated 18.5.1995 which was followed by a Fax message dated 19.5.1995." It is not disputed that the representation made by the Petitioner to the Central Government was thereafter rejected on 27.5.1995.

5. Learned Counsel for the Petitioner argued that after the Petitioner had made a proper representation on 15.3.1995 by whatever reason the State Government did not send the complete representation to the Central Government and for whatever reason even the truncated representation or incomplete representation was sent to the Government after about two months which was received on 17.5.1995 by the Central Government, the right of the Petitioner to get his representation considered expeditiously has been violated and as such continued detention of the Petitioner has been rendered illegal. In this connection Petitioner's learned Counsel has placed reliance on the judgment of the Supreme Court in the case of B. Alamelu v. State of Tamilnadu and Ors. reported in JT 1994 (7) SC 517.

6. In the case of B. Alamelu (supra) the point canvassed before the High Court was that constitutional right of the detenu under Article 22(5) of the Constitution got infringed inasmuch as the representation made against the detention order through the jail authorities was not forwarded to the Central Government; consequently the continued detention of the detenu had become illegal. The High Court distinguished the case of Jat Prakash v. District Magistrate, Bulandshahr and Ors. 1993 (Suppl) 1 SCC 392 and dismissed the writ petition against which the appeal was filed before the Supreme Court.

7. In that case of B. Alamelu against the detention pursuant to the order dated 17.2.1993 the Petitioner made a representation on 4.5.1994. The representation

was sent to the Central Government as late as on 22.7.1994 hence there was a delay of almost 84 days in sending the representation to the appropriate authority in the Central Government. Examining the point of this delay, the Supreme Court in paragraph 5 and thereafter in paragraph 6 has observed as follows:

5. ...To recapitulate, the grounds of detention made it clear that the detenu had a right to make a representation to the Central Government by addressing it to the Secretary to the Government of India. Ministry of Finance, Department of Revenue, COFEPOSA Section, New Delhi. Therefore, it was incumbent on the Superintendent, Central Prison, Madras to send one copy of the representation out of nine copies supplied to him to the said addressee. But surprisingly nothing was done in this connection by the jailor. He almost sat tight over the representation. It transpires that only the Collector of Customs having come to know about this representation, sent the same to the appropriate authority in the Central Government as late as on the 22nd July, 1994. Therefore, there was a delay of almost 84 days in sending the representation to the appropriate authority in the Central Government. It is true as submitted by the learned Counsel for the Central Government that after the representation has reached the Central Government it was considered and decided with least practicable delay by 27th July, 1994. In that connection, he invited our attention to the decision of this Court in the case of Abdul Salam alias Thiyyan Vs. Union of India and others, . In the said decision, it has been laid down that strictly speaking the Central Government is not the detaining authority within the meaning of Article 22(5) yet they are under legal obligation to dispose of the representation as early as possible. But such delay by the Central Government should not be subjected to such a rigorous scrutiny as is done in the case of a delay caused by the appropriate Government, namely the detaining authority. The Central Government should consider the representation with reasonable expedition. What is reasonable expedition depends upon the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But it certainly does not cover the delay due to negligence, callous inaction, avoidable red-tapism and unduly protected procrastination. From the explanation given in that case for the delay of one month and five days on the part of the Central Government in disposal of the representation, it was clear that the representation was considered most expeditiously and there was no negligence or callous inaction or avoidable red-tapism. Therefore, the detention was not vitiated due to delay.

6. In the facts of the present case it is not the delay on the part of the Central Government in disposing of the representation on 27th July, 1994 which reached its end on 22nd July, 1994 that is on the anvil. The question is whether the delay on the part of the Jailor in despatching the representation received by him on 4th May, 1994 to the Central Government has violated the constitutional right under Article 22(5) or not. So far as that question is concerned, it has to be noted that the Jailor on his part never despatched the representation to the Central

Government. If he had despatched the same as expeditiously as possible after 4th May, 1994 as requested by the Appellant in the covering letter, the matter would have stood on a different footing but that never happened. In the case of Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others, , it has been held by this Court that the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who has unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the Appellant's representation by the Government which received the representation 11 days after it was handed over to the Jail Superintendent by the detenu. This avoidable and unexplained delay had resulted in rendering the continued detention of the Appellant illegal and constitutionally impermissible. On the facts of the present case, the ratio of the aforesaid decision squarely gets attracted. So far as the decision of this Court in Jai Prakash's case (supra) is concerned, we fail to appreciate how the ratio of the decision could not be held to be applicable. The fact that the detenu was an Advocate in the present case cannot make any difference to the applicability of the ratio of the aforesaid decision. As in Jai Prakash's case so in the present case, the Appellant furnished nine copies of the representation to the Jailor. Under these circumstances, the Jailor was bound to send one copy to the Central Government and he did not do so and that infringed the constitutional right of the detenu under Article 22(5). A futile attempt was made by the learned Counsel for the Respondent to distinguish the judgment on the ground that in Jai Prakash's case (supra) the detention was under the National Security Act and that representation to the Central Government was never considered while in the present case the detention is under COFEPOSA and the representation was ultimately decided upon by the Central Government. These facts would make no difference to the applicability of the ratio of Jai Prakash's case. Even under COFEPOSA the Central Government having statutory power to revoke the detention u/s 11 cannot be said to be an authority which was not at all concerned with such a representation. On the contrary the grounds of detention themselves as furnished to the detenu had rightly indicated that the detenu could represent to the Central Government. As held by this Court in Jai Prakash's case (supra) when the detenu gave sufficient number of copies of the representation and left it to the jail authorities to forward the same to the authorities as specified in the grounds of detention, the Superintendent of Jail was legally bound to send one copy to the Central Government. We are, therefore, of the view that the detenu was denied his right to make an effective representation at the earliest opportunity and on that short ground his continued detention is liable to be held illegal. In our view on the facts of the present case the ratio of the decision of this Court in Jai Prakash's case has squarely got attracted.

8. Learned Counsel for the Petitioner rightly contends that the facts of B. Alamelu's case are on all force applicable to the facts of the present case and consequently this petition also deserves to be allowed. However Sri. A.K. Tripathi, learned A.G.A. drew our attention to the case of Sat Pal Vs. State of

Punjab and others, in which the question at issue before the Supreme Court was whether failure of the State Government of Punjab to forward the representation made by the detenu to the Central Government for revocation of his order of detention u/s 11 of the Act with unreasonable delay rendered its continued detention invalid or not. In the case of Satpal the detenu had made a representation on July 4, 1981. The Supreme Court found that the said representation had not been forwarded by the State Government to the Central Government till September 23, 1981. Considering the question whether unexplained delay on the part of the State Government in not forwarding the representation till 23.9.1981 i.e. for a period of 2 months and 15 days had rendered continued detention of the Petitioner invalid, the Supreme Court in para 12 observed as follows:

In the present case, there was, therefore, no denial of the right of making a representation to the Central Government for revocation of the order of detention u/s 11 of the Act unlike in Rattan Singh's case (supra). There is nothing but the unexplained delay on the part of the State Government and that by itself is not sufficient to invalidate the order of detention. The detenu was not deprived of the right of making a representation to the State Government i.e. the detaining authority, as well as of the right of making a representation to the Central Government for revocation of the order of detention u/s 11 of the Act. The representations that he made were duly considered by the State Government and the Central Government. The contention that the unexplained delay on the part of the State Government is sufficient to invalidate the order of detention can hardly be accepted. The Court must look at the substance of the matter and not act on mere technicality.

9. Relying upon the aforesaid judgment learned A.G.A. stated that in the instant case also the Central Government had rejected the representation of the Petitioners expeditiously and as such the Petitioner is not entitled to any relief in this case.

10. When there is a conflict of opinion between the two judgments of the Supreme Court, it is now well settled that the judgment of larger bench as also the subsequent judgment of the Supreme Court is to be preferred and followed by the High Court. (See the cases of Govind Narain Dubey v. State of U.P. 1986 ACC 57 , N. Meera Rani Vs. Government of Tamil Nadu and Another, , Union of India v. K.S. Subramaniam). Consequently we have no option but to rely upon the case of B. Alamelu (supra).

11. Learned A.G.A. then contended that in the instant petition the Petitioner had himself not categorically asserted that he had made a complete representation to the Central Government by giving the date of the said representation and it is only on the strength of the counter-affidavits quoted above that the Petitioner is now trying to argue that the Petitioner's representation to the Central Government was not sent expeditiously. Relying upon the counter-affidavit of the Central Government it is contended that this counter-affidavit itself makes it

clear that the Petitioner's representation was not complete and hence the representation made by the Petitioner should not be treated as representation in the eyes of law.

12. In reply to these arguments by learned A.G.A. Sri. Daya Shankar Mishra learned Counsel for the Petitioner has rightly contended that the State Government in its counter-affidavit had never raised any plea about the representation of the Petitioner being incomplete. Consequently it is argued that it was the lapse on the part of the State Government in not forwarding a complete representation made by the Petitioner or to confirm whether the Petitioner had made a complete representation to the Central Government or not. We enquired from the learned A.G.A. whether the record of the State Government was available with him. The learned A.G.A. produced before us the record of the State Government. A perusal of the said record makes it clear that the District Magistrate, Moradabad had forwarded five copies of the representation along with 5 copies of his comments to the State Government. The record nowhere indicates that after the Central Government asked the State Government to supply a complete representation any additional copy was asked from the detenu. We are, therefore, inclined to believe that the representation as made by the Petitioner was full and complete and there was no lapse on the part of the Petitioner in making a representation to the Central Government. It may also be added that even the grounds of detention supplied to the Petitioner categorically asserted that if the Petitioner wanted to make a representation to the Central Government he should address the same to the Secretary, Internal Security of the Central Government. It may also be mentioned that the representation made by the Petitioner was addressed both to the Home Secretary, State of U.P. as also the Secretary of Central Government (Internal Security). There is no merit in the contention of learned A.G.A. that the said representation made by the Petitioner did not require consideration by the Central Government. Following the case of B. Alamelu it has, therefore, to be held that the delay caused by the State Government in forwarding the representation of the Petitioner to the Central Government has rendered the continued detention of the Petitioner illegal in the eyes of law.

13. This petition accordingly succeeds. The Petitioner shall be set at liberty forthwith unless he is wanted in any other case.