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(2023) 05 MP CK 0033

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3866 Of 2023

Ranjeet Singh — APPELLANT

Vs

State Of Madhya Pradesh And Others — RESPONDENT

Date of Decision : 01-05-2023

Acts Referred:
Constitution Of India, 1950 — Article 22(5), 226
Prevention Of Blackmarketing And Maintenance Of Supplies Of Essential Commodities Act, 1980 — Section 3(1)(a)
Indian Penal Code, 1860 — Section 34, 201, 212, 420, 467, 468, 471,
Essential Commodities Act, 1955 — Section 3, 3(1)(a), 3(3), 7, 8, 8(1), 9, 11, 12(1)

Citation : (2023) 05 MP CK 0033

Hon'ble Judges : Vijay Kumar Shukla, J

Bench : Single Bench

Advocate : Makbool Ahmad Mansoori, Tarun Pagare

Final Decision : Allowed

Judgement

Vijay Kumar Shukla, J

1. The present petition is filed under Article 226 of the Constitution of India on behalf of detenu Ranjeet Singh through his wife seeking quashment of the detention order dated 24.01.2023 passed by the District Magistrate, Mandsaur under Section 3(1)(a) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short the Act).

2) Facts of the case are that Police Station Garoth, Dist. Mandsaur registered a criminal case against the petitioner and others on 05.11.2022 under Sections 420, 467, 468, 471, 212, 201 & 34 of IPC and Section 3 & 7 of Essential Commodities Act bearing Crime No. 470/2022. The petitioner was arrested in the aforesaid crime on 14.12.2022. The Superintendent of Police, Mandsaur forwarded a report on 24.01.2023 to the District Magistrate making a request to detain the petitioner under the Act. On 24.01.2023, the District Magistrate passed a detention order under Section 3(1)(a) of the Act against the petitioner.

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The petitioner was detained in Central Jail, Indore on 26.01.2023. The said order was approved by the State Govt. in terms of Section 3(3) of the Act on 01.02.2023. On 06.02.2023, a representation on behalf of the detenue was made to the District Magistrate, State Govt. and Union Govt. as per the provisions of Section 8 of the Act. On 03.03.2023, the case of the petitioner was placed by the State Govt. before the Advisory Board without any decision on the representation constituted under Section 9 of the Act. On 03.03.2023, the Advisory Board considered the material on record placed before it and opined that there exists sufficient cause for detention of the petitioner. On 09.03.2023, the State Govt. in purported exercise of powers conferred under Section 12(1) of the Act confirmed the detention order for the period of six months. While assailing the order of detention dated 24.01.2023 and the order of approval dated 09.03.2023 passed by the State Govt. under Section 12(1) of the Act, counsel for the petitioner submitted that a representation was submitted to the appropriate government in terms of the provisions of Sub-Section (1) of Section 8, but the said representation was not decided by the State Government and the representation along with the decision on the same was not forwarded to and placed before the Advisory Board. He argued that in terms of the provisions of Section 8, the State Government is bound to decide the representation expeditiously without any delay and to place the same before the Advisory Board. In support of his submissions, he has placed reliance on the following judgments:-

i) Sarabjeet Singh Mokha vs. District Magistrate

ii) Ankit Ashok Jalon vs. Union of India & Ors. (2020) 16 SCC 127

iii) State of Punjab vs. Sukhpal Singh (1990) 1 SCC 35

iv) Aslam vs. The State of M.P. & Others 2022(3) M.P.L.J. 539

3) Considering the aforesaid submissions, this Court passed an order on 20.04.2023 and granted time to the State Govt. to file additional reply because the record was not indicating that whether any decision was taken on the representation of the petitioner before referring the matter to the Advisory Board and whether the representation of the petitioner alongwith decision on the same was referred to the Advisory Board. In pursuant to the said order, the State Government filed an additional reply and in para-4 of the reply stated that so far the representation sent to the Collector by the petitioner's wife by speed post dated 06.02.2023 is concerned, the same was received in the office of Collector, Inward Department on 08.02.2023, however, the same was misplaced and in this regard a show cause notice dated 25.04.2023 was issued to the concerned Clerk of Inward Department. After passing of order by this Court on 20.04.2023, the State Govt. rejected the representation of the petitioner by order dated 25.04.2023 after filing of the writ petition with delay of 76 days.

4) Counsel for the State supports the order of detention and submits that the representation submitted on 06.02.2023 was misplaced and, therefore, the same

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could not be decided and a show cause notice has already been issued against the concerned Clerk. He further submits that on 25.04.2023, the State Govt. has rejected the representation of the petitioner which has been filed as Annexure A/3 along with the additional reply.

5) I have heard the learned counsel for the parties and perused the record.

6) To appreciate the rival submissions the relevant provisions of Section 8 & 11 of the Act are reproduced as under :-

8. Grounds of order of detention to be disclosed to person affected by the order.- (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

11. Procedure of Advisory Boards. - (1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board, and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

7) The provisions of the Act, 1980 is pari materia with the provisions of National Security Act, 1980. The Apex Court in the case of Sarabjeet Singh Mokha (supra) while considering the provisions relating to consideration of representation in the context of reference to the Advisory Board held as under:-

43. Justice UU Lalit categorized the different stages for when a representation is

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received and disposed, with the underlying principle that the representation must be expeditiously disposed of, at every stage:

''17. In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in the following four categories:

17.1. If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate Government, the representation must be considered with expedition. Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.

17.2. If the representation is received just before the reference is made to the Advisory Board and there is not sufficient time to decide the representation, in terms of law laid down in Jayanarayan Sukul [Jayanarayan Sukul v. State of W.B., (1970) 1 SCC 219 : 1970 SCC (Cri) 92] and Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] the representation must be decided first and thereafter the representation and the decision must be sent to the Advisory Board. This is premised on the principle that the consideration by the appropriate Government is completely independent and also that there ought not to be any delay in consideration of the representation.

17.3. If the representation is received after the reference is made but before the matter is decided by the Advisory Board, according to the principles laid down in Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] , the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.

17.4. If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the PART D Advisory Board. The representation in such cases must be considered with expedition.

18. [Ã¢Â?Â¦] it is well accepted that the representation must be considered with utmost expedition; and the power of the Government is completely independent of the power of the Advisory Board; and the scope of consideration is also qualitatively different, there is no reason why the consideration by the Government must await the decision by the Advisory Board. None of the aforesaid cases even remotely suggested that the consideration must await till the report was received from the Advisory Board.''

8) The Apex Court in para-17.1 held that if the representation is received well before the reference is made to the Advisory Board and the representation must be considered with expedition by the appropriate Court. Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.

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9) In the case of Ankit Ashok Jalon (supra), the Apex Court held that the State Government is not bound to wait on the Advisory Board's report before deciding the representation and must do so as expeditiously as possible. In para-50 of Sarabjeet Singh Mokha case, the Apex Court held by delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) having the representation being considered expeditiously.

10) In the case of Sukhpal Singh (supra) in para-17 of the judgment, the Apex Court considered that Article 22(5) of the Constitution enjoins that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

11) A Division Bench of this Court in the case of Aslam s/o Haji Kasam (supra) after referring to the judgment passed in the case of Sarabjeet Singh Mokha in para-8 held that non-consideration of representation of the detenu would vitiate the orders of detenu.

12) From the facts of the present case and as per the additional reply filed by the State Government, it is crystal clear that the representation submitted on behalf of the detenue by speed post dated 06.02.2023 was received in the Office of Collector on 08.02.2023, but the same was not decided and the said representation was also not placed before the Advisory Board. The respondents have admitted that the said representation was misplaced and a show cause notice has been issued to the concerned Clerk of the Department. After passing of order by this Court on 20.04.2023 making a query from the Government Advocate that the record does not indicate that the representation made on behalf of the petitioner was decided and the same was forwarded to the Advisory Board then the State Government passed an order on 25.04.2023 rejecting the representation with delay of 76 days. The representation ought to have been decided immediately without waiting the opinion of the Advisory Board and as per para-43 of the judgment of the Sarabjeet Singh Mokha (supra), the representation ought to have been considered with expedition and the representation along with the decision should have been forwarded to the Advisory Board and should have been made part of the documents which were placed before the Advisory Board.

13) From the record and the additional reply, it is crystal clear that the representation of the petitioner was not decided and the same was not placed before the Advisory Board. The representation of the petitioner was taken casually by the respondents as it is stated that the same was misplaced by the concerned Clerk. A casual approach was adopted by the authorities in such a sensitive matter of detention, this Court highly deprecates the conduct and manner of the respondents in dealing the present case of detention.

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Consequently, the petition is allowed. The order of detention dated 24.01.2023 and order of State Government dated 09.03.2023 are quashed. The petitioner detenu is directed to be released from custody forthwith if he is not required in any other case.

CC as per rules.

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