

(1998) 06 AHC CK 0007

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition Nos. 15837. 15838, 15840 and 15841 of 1999

Sandeep Singh Chauhan

APPELLANT

Vs

Adhikshak Kendriya Karagar, Fatehpur & Ors.

RESPONDENT

Date of Decision : 11-06-1998

Acts Referred:

National Security Act, 1980 — Section 14, 3(2), 8

Citation : (1998) 06 AHC CK 0007

Hon'ble Judges : R.R.K.Trivedi, J and O.P.Garg, J

Final Decision : Allowed

Judgement

1. In all the aforesaid writ petitions questions of fact and law are similar and they can conveniently be decided by a common judgment against which learned counsel for the parties have no objection.

2." Petitioners of the aforesaid writ petitions have filed these petitions challenging the order dated 21121998 passed by respondent No. 2, District Magistrate, Shahjahanpur, under Section 3(2) of the National Security Act (hereinafter referred to as the Act) under which petitioners have been detained.

3. In all the writ petitions counter and rejoinder affidavits have been exchanged. We have heard Shri D.S. Mishra, learned counsel for the petitioner, Shri A.K. Tripathi, learned AGA for respondents Nos. 1 to 3 and Shri Tej Prakash, Shri K.N. Pandey, Shri S.C. Dube and Shri S.C. Mishra for Union of India.

4. Learned counsel for the petitioners have challenged the continued detention of the petitioners on the ground of delay in deciding the representation of the petitioners by the Central Government on two grounds. The first submission is that consideration on the representations of the petitioners was postponed illegally by the Central Government and it was awaiting for the report from the Advisory Board. It has been submitted that on 2911999 State Government informed the Central Government that opinion of the Advisory Board has not

been received, even then representations were not taken up for considerations by the Central Government. The consideration on the representations was started only on 521999 after receipt of the opinion of the Advisory Board on 321999. It is submitted that this delay of 12 days i.e. from 2311999 to 421999 does not bear any explanation and is sufficient to render the continued detention of the petitioners as illegal. For this submission learned counsel for the petitioner has placed reliance in the case of Pappu alias Ausan Singh v. Adhikshak Janpad Karagar, Mainpuri, 1999 (1) JIC 234 (All). The second submission of the learned counsel for the petitioners is that the representations of the petitioners with all complete reports and materials were placed before the Home Minister on 9 21999, but it was decided by the Home Minister on 1521999 i.e. after 5 days for which there is no valid explanation and this delay render continued detention of the petitioners illegal. Reliance has been placed in the case of Rajammal v. State of Tamil Nadu and another, JT 1998 (8) SC 598 and also unreported judgments of the Division Bench of this Court in the cases of Ashwani Kumar @ Soni v. Superintendent, District Jail, Muzaffarnagar and others, Habeas Corpus Writ Petition No. 8114 of 1999, decided on 11599 and Govind Palv. Superintendent, District Jail, Varanasi and others, Habeas Corpus Writ Petition No. 41113 of 1998, decided on 20499.

5. Shri A.K. Tripathi, learned AGA, on the other hand, submitted that Rajammal's case (supra) relied on by the learned counsel for the petitioners is not applicable in the facts of the present case and is distinguishable. In sum and substance, the submission of the learned AGA is that in Rajammal's case (supra) Hon'ble Supreme Court has considered the delay caused in deciding the representation by the appropriate Government while in the present case the delay is alleged to have been caused by the Central Government which could exercise statutory powers and not under constitutional obligation caused by Article 22(5) of the Constitution of India. It is submitted that statutory obligation cannot be equated with constitutional obligation. Learned counsel for Union of India submitted that Bina Prasad has explained delay in Para 8 of the counteraffidavit and delay of few days was on account of holidays.

6. We have considered the submissions of the learned counsel for the parties. There is no dispute about the dates between the parties. This Court in several cases has already taken the view that Central Government could not postpone the decision on the in presentation on the ground that opinion or the Advisory Board was not made available. If the opinion was not made available representations ought to have been decided without any further delay. In the present case there is clear delay of 12 days during which the representations of the petitioners were not considered by the Central Government on the ground that opinion of the Advisory Board was not made available. Thus, judgment of Court in the case of Pappu (supra) is squarely applicable which is sufficient to vitiate the continued detention of the petitioners. So far as the delay by Home Minister in deciding the representation is concerned this Court has already taken the view that the explanation based on one or two holidays falling in between

cannot be, accepted. Relevant portion of the judgment dated 2041999 in the case of Govind Pal is being reproduced below:

"In our opinion, such explanation based on one or two holidays falling in between cannot be accepted. We have come across several cases of preventive detentions, where representations were decided by the Central Government on holidays. However, even if, for argument's sake, the explanation is accepted, three days delay remained unexplained which rendered the continued detention of petitioner illegal."

7. In the present case also the delay has been tried to be explained by saying that 6, 7, 13 and 14th February, 1999 were holidays. Dates 6 and 7th February, 1999 were not relevant as representations were placed before the Home Minister on 921999. Even if, for argument's sake it is accepted that 13 and 14th February, 1999 were holidays and it is good explanation, there remains delay of three days for which no explanation has been given. Thus, the view taken in Govind Pal's case is squarely applicable in the present case.

8. So far as the submission of the learned AGA, that in Rajammal's case (supra) Hon'ble Supreme Court has considered constitutional obligation of the appropriate Government to decide the representation as early as possible, whereas in the present case delay in deciding the representation is with regard to the statutory obligation cared by Section 14 of the Act and thus, same consideration cannot be applicable, also cannot be accepted.

9. In our considered opinion, as the question of liberty of citizen is involved no such distinction can be drawn on the basis of the constitutional obligation and statutory obligation. Sections 8 and 14 of the Act provide safeguard against the preventive detention and they are to be treated at the equal footing. The view we have expressed above find support from the Full Bench judgment of this Court in the case of Raj Bahadur Yadav v. State of U.P. and others, 1997 (35) ACC 33 : 1997 JIC 645 (All) (FB). In para 17 the Full Bench has held as under:

"17. Coming to the question of delay in disposing of the detenu's representation, the position is clear that the Advisory Board, the appropriate Government and the Central Government are required to act with promptitude and reasonable despatch in dealing with the representation of the detenu and to consider whether his further detention is legal. Inordinate and unexplained delay on the part of any of the authorities dealing with matter render further detention of the detenu illegal."

10. Thus, the delay of five days at the stage of Home Minister in deciding the representations has also not been explained and it also render continued detention of the petitioners illegal.

11. For the reasons stated above, the writ petitions are allowed. As the continued detention of the petitioners have been found to be illegal, respondents are directed to set the petitioners at liberty forthwith if their detention are not

required in any other case. Petitions allowed.