
(2012) 08 JH CK 0098

In the Jharkhand High Court

Case No : Writ Petition (Cr.) H.B. (D.B.) No. 109 of 2012

Santosh Yadav

APPELLANT

Vs

The Sate of Jharkhand and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2012) 08 JH CK 0098

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Advocate : Munna Lal Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

1. This writ petition has been filed challenging the order of detention of the petitioner passed by the District Magistrate, Chatra (resondent No. 3) on 26.11.2011 u/s 12 of Jharkhand Control of Crimes Act, 2002 (the Act for short) and the subsequent orders confirming the same. It appears from the order of detention that in short, the ground is that the petitioner is an active member of Extremist Organization JLT/PLFI and he is involved in about 15 cases of serious nature effecting public and there was chance of his release on bail, due to which there is threat to public order.

2. Mr. A.K. Kashyap, learned senior Counsel appearing for the petitioner submitted as follows

3. The detention order is bad as the District Magistrate did not communicate in the detention order that the petitioner had a right to make representation before him as held in the judgment reported in AIR 2000 Supreme Court 2504 "State of Maharashtra Vs. Santosh Shankar Acharya".

He has also relied on the order dated 25th January, 2012 passed in W.P.H.B. (Cr.) (D.B.) No. 307 of 2011 in support of his contention.

4. It appears that copy of the detention order dated 26.11.2011 was sent to the petitioner and it was clearly indicated therein that he could place his written representation, if any, to the State Government through Jail Superintendent, Chatra. The said order was admittedly served on the petitioner on 28.11.2011. It was approved within one week by the State Government i.e. on 03.12.2011. Admittedly, the petitioner did not make any representation before any authority. As per Section 17 of the Act, the detaining Authority has to communicate the detenu the grounds on which the order has been made and he is required to afford him earliest opportunity of making representation against the order to the State Government (emphasis supplied)

In the case of Santosh Shankar Acharya (*supra*) it was, *inter alia*, observed that as the detaining authority continues to be detaining authority until the order of detention was approved by the State Government within a period of 12 days from the date of issuance of detention order, he could entertain a representation from a detenu and therefore no communication of the fact to the detenu that he could make a representation to the detaining authority so long as the order of detention has not been approved by the State Government could constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution.

In the case of "Manoj Kumar Singh @ Bhola Singh @ Bhola" the position was different. In that case, it appears that there was nothing in the order of detention indicating the detenu that he had right to make representation.

In the present case, admittedly, the order of detention was served within two days on the petitioner but he did not choose to make any representation to any authority. The order of detaining authority can be approved within 12 days by the State Government. The detaining authority is not expected to know when his order will be approved by the State Government within this period. In the present case, it was approved within one week. The detenu was informed about the right to make representation in terms of Section 17 of the Act, as noticed above. The spirit of Article 22(5) of the Constitution of India is that earliest opportunity should be given to the detenu to make representation which opportunity has been given to the petitioner in this case, as noticed above but he did not make any representation to any authority/ State Government. Otherwise it could be referred to the authority competent to pass order on the same i.e. the State Government or detaining authority.

5. The next point urged by Mr. Kashyap is that there has been violation of Section 19 of the Act inasmuch as matter was not placed before the Advisory Board within three weeks of detention.

6. We had called for the original records. From perusal of it, it is clear that the grounds of detention were placed before Advisory Board within three weeks. In the Full Bench Judgment, reported in 1990 P.L.J.R. 69 "Raj Kumar Gupta Vrs. The State of Bihar & Others" it was, *inter alia*, held that mere dispatch of the

detention order along with grounds and other materials by the State Government for being placed before the Advisory Board will mean placing of the matters before the Advisory Board.

7. Mr. Kashyap, learned senior Counsel then submitted that it does not appear from the order of Advisory Board that the grounds of detention and other materials were placed before it.

8. From the records it is clear that the grounds were placed before the Advisory Board. In our opinion, the Advisory Board is not required to deal with the grounds of detention in detail otherwise there may be a complain of prejudice.

9. The other contention of Mr. Kashyap is that there has been violation of Section 22(5) of the Act, as the State Government has simply approved the order of detention only on the basis that the Advisory Board has confirmed the order of detention, as will appear from the order of the State Government dated 19.01.2012.

10. It appears from the order dated 03.12.2011 that the State Government had already approved the grounds of detention passed by the detaining authority. Thereafter, the Advisory Board reported its satisfaction that sufficient causes were made out for detention specially in view of Section 12(A) of the Control of Crime Act. Then the State Government confirmed the detention order by the said order dated 19.1.2012. This order was also served on petitioner on 25.1.2012. In our opinion u/s 21 of the Act the State Government is not required to pass a detailed order reiterating its satisfaction.

11. It may be noted again that petitioner had not made any representation to any authority after the order of detention was served on him on 28.11.2011, till date, except he appeared before the Advisory Board and the Advisory Board heard him.

12. However, section 21(2) of the Act, inter alia, provides that where the Advisory Board has reported that there is no sufficient cause for the detention of a person, the Government shall revoke the detention order and release the person forthwith whereas Section 21(1) of the Act inter alia, provides that where the Advisory Board has reported that in its opinion there exist sufficient cause for the detention of a person, State Government may confirm the detention order (emphasis supplied). In our opinion, this provision has been, inter alia, indicated in the judgment of the Hon"ble Calcutta High Court that if the State Government so thinks fit, it may confirm the detention order on the basis of report of Advisory Board. But it does not mean that the State Government is duty bound to review the case of the detenue. No other grounds urged.

As discussed above, we find no merit in the said contentions raised on behalf of the petitioner. Accordingly, this writ petition is dismissed.