

(2003) 03 PAT CK 0047
In the Patna High Court
Case No : Cr.W.J.C. No. 467 of 2002

Shambhu Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Citation : (2003) 03 PAT CK 0047

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The Petitioner has been detained u/s 12(2) of the Bihar Control of Crimes Act, 1981 (in short, the Act) by the District Magistrate, Begusarai vide his Memo No. 1756/Vidhi dated 24.9.2002. The State Government approved and later confirmed the detention u/s 12(3) and Section 21(1) read with Section 22 of the Act on 5.10.2002 and 7.11.2002 respectively. The Petitioner seeks quashing of the aforesaid orders and a direction for his release.

2. Shri Ajay Kumar Thakur, learned Counsel for the Petitioner, submitted that the detention is fit to be quashed on the solitary ground of delay in disposal of the representation. The relevant facts in this regard are as follows.

3. Upon service of grounds of detention on 26.9.2002 the Petitioner filed representation on 6.10.2002. The representation was received in the Department on 9.10.2002. The comments of the Detaining Authority i.e. District Magistrate, Begusarai was called for on 11.10.2002 and the same was received on 12.10.2002. In the meanwhile reference had been made to the Advisory Board on 9.10.2002. Accordingly when the representation along with the comments of the Detaining Authority was put up before the Deputy Secretary on 18.10.2002 he suggested that the matter may be put up after sitting of the Advisory Board. From the record it is not clear as to actually when the Advisory Board considered the case of the Petitioner. Statement at the bar is that the consideration took place on 24.10.2002. The fact that the Board's opinion is countersigned by the Officer on Duty on 25.10.2002 prima facie shows that the Advisory Board considered the Petitioner's case on 24.10.2002. To complete the narration of

facts, the opinion was forwarded by the Officer on Duty to the State Government on 26.10.2002. It was received in the Department on 28.10.2002. Meanwhile on 24.10.2002 the file was again put up before the Deputy Secretary presumably after meeting of the Advisory Board. The Under Secretary and the Deputy Secretary dealt with the matter on the same day. The Secretary Incharge submitted his notes on 25.10.2002. Approving the notes the Minister Incharge i.e. the Chief Minister rejected the representation on 26.10.2002.

4. Shri Ajay Kumar Thakur submitted that the detenu is entitled to have his representation considered independent of the opinion of the Advisory Board and therefore the State Government committed error in delaying consideration on account of pendency of the reference of the Advisory Board since 9.10.2002. This submission of the Counsel cannot be accepted in view of decision of a Constitution Bench of the Supreme Court in K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, the relevant part whereof may usefully be quoted as under:

The time imperative for consideration of representation can never be absolute or obsessive. It depends upon the necessities and, the time at which the representation made. The representation may be received before the case is referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board.

In view of above pronouncement by the Constitution Bench of the Apex Court the delay on account of pendency of reference to the Advisory Board cannot be fatal to the detention.

5. Shri Thakur however submitted that if the Government indeed decided to await the opinion of the Advisory Board there was no occasion to consider the representation before receipt of the opinion. It may be recalled that the opinion of the Advisory Board was received in the Department on 28.10.2002 but the representation was taken up for consideration on 24.10.2002 itself. Shri Thakur also submitted that in terms of the above decision of the Supreme Court the Government was obliged to send copy of the representation to the Advisory Board but there is nothing in the record to show that the representation was forwarded and therefore it cannot be said that the action of the Respondents is in accordance with the law laid down by the Supreme Court.

6. Shri Amar Nath Singh, learned Standing Counsel, submitted that though opinion of the Advisory Board was formally received in the Department on 21.10.2002, fact of the matter is that deliberations took place before the

Advisory Board on 24.10.2002 at which the Officers of the Home Department amongst others were present. Having known about the out-come of the reference the Department bonafide took up consideration of the representation without wasting further time.

7. No doubt, right to expeditious consideration of the representation is a valuable right guaranteed not only in the relevant statute-in the instant case, the Bihar Control of Crimes Act but also in the Constitution of India under Article 22(5), and where there is breach of such right the continuance of detention cannot be said to be in accordance with law. Thus no sooner the representation is received the authorities are required to start the process of consideration. In the instant case the process indeed commenced on 11.10.2002 itself when comments of the District Magistrate was called for. After the comments was received the file was put up before the Deputy Secretary. The Deputy Secretary took a view that further consideration may await sitting of the Advisory Board. It may be recalled that on 9.10.2002 the Petitioner's detention had been referred to the Advisory Board for opinion. In view of the decision of the Supreme Court in K.M. Abdullah Kunhi (supra) postponing consideration of the representation till receipt of the report of Advisory Board cannot be said to be erroneous and thus the period spent during pendency of the reference can be regarded as valid explanation. It has to be kept in mind that no sooner the matter was taken up by the Advisory Board on 24.10.2002 than the file was again put up before the Deputy Secretary on the same day. The Deputy Secretary put up his notes on the same day. The Secretary Incharge forwarded his notes on the next day i.e. 25.10.2002. Agreeing with the notes the Minister Incharge i.e. Chief Minister rejected the representation on 26.10.2002. It is true that in terms of the law laid down by the Supreme Court in the aforesaid case the Government could have waited till the receipt of the report i.e. 28.10.2002 but if it took up consideration of the representation on 24.10.2002 itself after sitting of the Advisory Board, the deviation, if any, from the guidelines laid down by the Supreme Court was for the benefit of the Petitioner. If the Government could wait till 28.10.2002, but instead commenced consideration on 24.10.2002, it in no way caused any prejudice to the Petitioner.

8. As regards the other limb of argument the affidavit is silent on the point and records also does not show-one way or other as to whether the representation was forwarded to the Advisory Board. The Department in its affidavit should have clearly stated as to whether or not the representation was sent and if not, the reasons therefor. However when the detenu was heard in person by the Advisory Board I do not think, non-forwarding of the representation caused any prejudice to him so as to invalidate his detention. The object of representation is to give an opportunity to the detenu to explain the grounds of detention. Reference to the Advisory Board is an additional safeguard. There is however one obvious distinction. While the detenu is personally heard by the Advisory Board and therefore at the stage of hearing he has the opportunity to explain the ground, the Government takes decision upon consideration of the representation without

such personal hearing. The forwarding of the representation as per the decision of the Supreme Court may simply enable the Advisory Board in considering the validity of his detention and, therefore, where representation is not forwarded it may have bearing on the decision of the Advisory Board. It is in this context and for that purpose that the Supreme Court observed that the representation should be forwarded to the Advisory Board-whether received before or after reference to it. The non-forwarding cannot have any bearing on the validity of the decision of the State Government which in any case has to take independent decision on the representation. Thus even if it be accepted that the representation was not forwarded to the Advisory Board I do not think on this ground the detention can be said to be illegal.

9. The contention of the counsel having thus been rejected, I do not find any merit in this writ petition which is accordingly dismissed.

A.K. Verma, J.

10. I agree.