
(2000) 01 OHC CK 0027

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8486 of 1999

Shanina Begum

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

National Security Act, 1980 — Section 14, 3, 3(5)

Citation : (2000) CriLJ 1214 : (2001) 20 OCR 347 : (2000) 18 OCR 163 :
(2000) 1 OLR 301

Hon'ble Judges : P.K. Mohanty, J;P.K. Misra, J

Bench : Division Bench

Advocate : R.N. Mohanty, M.K. Panda and P. Jena, for the Appellant; Addl.
Standing Counsel and Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—This petition seeking for a writ of Habeas Corpus has been filed by the wife of the detenu. The order of detention u/s 3 of the National Security Act, 66 of 1980 (for short, the "Act") was passed by the District Magistrate, Cuttack, on 26.4.1999 while the detenu was already in jail custody. The said order was served on the detenu on 27.4.1999 and the grounds of detention were served on 30.4.1999. The State Government approved of the order of detention by order dated 6.5.1999 and the same was forwarded to the Central Government by letter dated 13.5.1999. Representations were made by the detenu to the State Government as well as the Central Government on 13.5.1999. The State Government rejected the representation on 29.5.1999 and the Central Government rejected the representation on 22.6.1999. Such orders rejecting the representations were subsequently communicated.

2. The order of detention has been challenged, inter alia, on the following grounds :

(i) The order dated 6.5.1999 of the State Government confirming the order of

detention passed by the District Magistrate was not communicated to the Central Government within seven days;

(ii) The State Government and the Central Government had not disposed of the representations within a reasonable time;

(iii) The order of detention was served on the detenu while he was already in jail custody and the grounds do not disclose any reasonable basis for the Collector and District Magistrate to come to conclusion that it was necessary to pass the order of detention;

(iv) In the grounds of detention, reference was made to involvement of the detenu in twenty-three cases during past nine years without giving the particulars of cases and without giving any documents in support of such allegations contained in the grounds of detention.

3. It is contended by the learned counsel appearing for the petitioner that the counter affidavit of opposite party No. 1 discloses that the order of approval dated 6.5.1999 was communicated to the Central Government on 15.5.1999 and as such order was vitiated on account of non-compliance with the provisions contained in Section 3(5) of the Act.

4. Section 3(5) of the Act provides as under :

"(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government have a bearing on the necessity for the order."

If, in fact, the order of approval by the State Government was communicated on 15.5.1999, there cannot be any doubt that there had been a violation of Section 3(5). However, it appears from subsequent paragraphs in the counter affidavit that the order was communicated on 13.5.1999. A perusal of the file produced by the Standing Counsel also indicates that the order of rejection dated 6.5.1999 was communicated on 13.5.1999. It is obvious that the reference to the date "15.5.1999" is a typographical mistake.

5. In this connection, the learned counsel for the petitioner also submitted that the provision in Section 3(5) cannot be said to have been complied with merely because the order was forwarded by memo dated 13.5.1999 and it was required that the report relating to order of approval should have reached the Central Government within a period of seven days, as prescribed in Section 3(5). In support of the said submission, the learned counsel for the petitioner has relied upon the decision reported in 1986 ALLJ. 1172 (Guru Charan Singh v. Superintendent, Central Jail, Bareilly and Ors.). However, in view of the decision of this Court reported in 1987 (11) OLR 140. (Ullas Sahu etc. v. District Magistrate, Cuttack and Ors.), such contention cannot be accepted and it must be taken that the requirement of Section 3(5) was complied with by despatching

the report within seven days.

6. The learned counsel for the petitioner also contended that the period of seven days should be counted inclusive of the date of order and since the order was made on 6.5.1999, necessary report should have been made on or before 12.5.1999. Such contention also cannot be accepted. While calculating the period of seven days, necessarily the date on which the order was made or the approval was made by the State Government is to be excluded keeping in view the principle envisaged in Section 9 of the General Clauses Act, 1897 (corresponding to Section 10 of the Orissa General Clauses Act). Similar view has been expressed in the decision reported in Padma Charan Mohapatra Vs. Superintendent of Police, cum Taxing authority of Phulbani, in a case arising under the Bihar and Orissa Motor Vehicles Taxation Act.

7. The contention raised by the counsel for the petitioner that there has been delay in disposal of the representation by the State Government cannot be accepted in the facts and circumstances of the case. The representation was made on 13.5.1999. The file produced on behalf of the State Government indicates that thereafter the matter has been dealt with by the State Government authorities without any unreasonable delay and the representation was rejected on 29.5.1999.

8. Though the petition cannot succeed on these grounds, the ground relating to delay in disposal of the representation by the Central Government appears to be acceptable. It is not disputed that the representation to the Central Government was also made on 13.5.1999. Section 14 of the Act empowers the Central Government to revoke or modify any order of detention made by the authority u/s 3 of the Act. For the aforesaid purpose, the provision of Section 14(1) of the Act being relevant is extracted hereunder :

"14. Revocation of detention orders -

(1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked, or modified -

(a) notwithstanding that the order has been made by an officer mentioned in Sub-section (3) of Section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government."

A perusal of Section 14(1) makes it clear that the power of the Central Government to revoke or modify the order of detention is independent of the power of the State Government. Even where the State Government confirms an order of detention or rejects the representation, the Central Government can allow such representation and revoke the detention. Section 8(1) of the Act provides that the grounds of order of detention are to be disclosed to the persons affected by the order. It enjoins upon the authority making the order of detention

to communicate to the detenu the grounds on which the order has been made and also to "afford him the earliest opportunity of making a representation against the order to the appropriate Government." The requirement of communicating the order or approval to the Central Government as envisaged in Section 3(5) and the authority vested in the Central Government to revoke a detention order as envisaged in Section 14(1) along with the provision contained in Section 8, make it clear that the representation made by the detenu to the Central Government has to be disposed of as expeditiously as possible without any unreasonable delay. These provisions are, in fact, an extension of the principle contained in Article 22(5) of the Constitution. Law is well settled that any delay in disposing of the representation either by the State Government or by the Central Government would vitiate the order of detention.

9. In the present case, from the counter affidavit filed on behalf of the Central Government, it appears that the representation of the detenu was received by the Central Government on 9.6.1999 through the Under Secretary to Government of Orissa vide Letter No. 3233/C, dated 31.5.1999. It is, of course, true that after receiving the representation, the Central Government appears to have acted with due dispatch and the representation has been dealt with and disposed of on 22.6.1999 and thus, the period taken by the Central Government from 9.6.1999 to 22.6.1999 cannot be characterised as unreasonable. However, the question arises as to whether there was any justification for the State Government to retain the representation for a period from 13.5.1999 to 31.5.1999, that is to say for a period of about 18 days. The State Government has not offered any explanation in their counter as to why the representation was not despatched to the Central Government prior to 31.5.1999. The file which has been produced also does not indicate any reason as to why the State sat over the representation of the detenu meant for the Central Government for a period of about 18 days. After having received the representation, it was the duty of the State Government and its subordinate officers concerned to despatch the same to the Central Government at the earliest without any unreasonable delay. It is, of course, true that the State Government was required to give its comments and furnish necessary documents. In the absence of any reason disclosed either in the counter affidavit or even in the file, it is not possible to fathom the reasons for such delay in despatching the representation of the detenu to the Central Government. Thus, though there may not be any laches on the part of the Central Government in dealing with the representation, the laches on the part of the State Government in not forwarding the representation of the detenu to the Central Government for an unduly long period of about 18 days has the effect of vitiating the order of detention. The aforesaid view taken by us is supported by the decision of the Supreme Court reported in *Vijay Kumar Vs. State of Jammu and Kashmir and Others*, wherein the delay of 14 days in sending the representation was found to be unreasonable. In such view of the matter, the order of detention must be taken to have become invalid and as such the detention has to be quashed.

10. In view of the aforesaid, it is unnecessary to deal with other contentions raised by the counsel for the petitioner, though on the face of it, the contention relating to non-supply of relevant documents and non-application of mind to the fact that the detenu was already in jail custody in connection with criminal case, cannot be rejected out of hand. However, in view of the fact that the detention has become vitiated due to delay in despatching the representation of the detenu to the Central Government, it is unnecessary to consider those other aspects.

11. For the aforesaid reasons, the writ application is allowed and the order of detention is quashed. The detenu should be released forthwith if not required to be detained in connection with any other case.

P. K. Mohanty, J.

12. I agree.