
(2003) 01 AHC CK 0171
In the Allahabad High Court
Case No : Writ Petition No. 506 of 2002 (H/C)

Sher Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2), 8

Citation : (2003) CriLJ 1857 : (2003) 3 RCR(Criminal) 219

Hon'ble Judges : Vishnu Sahai, J;R.C. Pandey, J

Bench : Division Bench

Advocate : M.P. Yadav, for the Appellant; Brij Bahadur Saxena and S.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this writ petition, preferred under Article 226 of the Constitution of India, the petitioner-detenu Sher Singh has impugned the order dated 2-8-2002, passed by the third opposite party, Mr. Mahesh Kumar Gupta, District Magistrate, Agra, detaining him u/s 3(2) of the National Security Act.

The detention order along with the grounds of detention, which are also dated 2-8-2002, was served on the petitioner-detenu on 2-8-2002 and their true copies have been collectively filed as Annexure 1 to the writ petition.

2. We have heard counsel for the parties. Since in our view this writ petition deserves to succeed on the averments contained in paragraphs 7 and 8 of the petition and those contained in Ground No. 28 (h) thereof, we are not adverting to the prejudicial activities of the petitioner detenu contained in the grounds of detention. The substance of the averments contained in paragraphs 7 and 8 of the petition and ground No. 28(h) thereof, is that although the petitioner detenu made a representation on 12-8-2002 to opposite parties Nos. 1 to 3, namely; (1) Union of India through Secretary, Government of India, Ministry of Home Affairs (Internal Security Department), North Block, New Delhi, (2) State of U.P. through

Secretary, Department of Home, Civil Secretariat, Lucknow and (3) District Magistrate, Agra, U.P. the said representation has not been decided till date.

However, during the course of submissions Mr. M.P. Yadav, learned counsel for the petitioner restricted his submission to the representation preferred by the petitioner detenu to Union of India.

3. The averments contained in paragraphs 7 and 8 of the petition and ground No. 28(h) thereof have been replied to in paragraph 9 of the affidavit of the detaining authority (opposite party No. 3), and in paragraph 6 of the return of Mr. Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi dated 26-11-2002 and in paragraph 3 of an additional return of the said functionary, dated 31-12-2002.

In paragraph 9, the detaining authority has stated thus:

"That with regard to the contents of para 7 of the writ petition so far the contention of the petitioner that he made a representation to the respondent Nos. 1, 2 & 3 is concerned, it is submitted that the petitioner made a representation undated given to the jail authorities on 19-8-2002, it came to the office of the detaining authority on 19-8-2002 itself, they were addressed to the State Government, Central Govt. Chairman, Advisory Board, it came to the office of District magistrate on 19-8-2002 and thereafter the detaining authority prepared the parawise comments on the representation on 22-8-2002 and sent the copies of the representation to the State Govt. Secretary, Home Department and Secretary, Internal Security, New Delhi along with representation and it is also submitted that no representation was made addressing to the District Magistrate. The contention in this regard in para Under reply is incorrect and denied. It is also submitted that the date of representation is not 12-8-2002, the representation is undated."

In paragraph 6 of his first return Mr. Ramesh Kumar has stated thus :

The allegations made in the para Nos. 7, 8, 10, 17 and ground (b) & (h) of para 28 of the petition are denied being incorrect. It is stated that Govt. of Uttar Pradesh vide their letter No. 108/2/356/CX-7 dated 24-2-2002 forwarded a representation of Shri Sher Singh. As the representation was not addressed to Central Govt, it was returned to them for taking action u/s 8 of NSA-1980 vide Ministry's letter dated 4-9-2002. The representation dated 12-8-2002 alleged to be addressed to Central Govt. was never received in the office of Respondent No. 1. Hence the averments that the representation made to Respondent No. 1 is still pending is denied."

In paragraph 3 of his additional return Mr. Ramesh Kumar has stated thus :

The statement made in our earlier Affidavit at para 6 is reiterated. The allegations made in the Para Nos. 7, 8, 10, 17 and grounds (b) and (h) of para 28 of the petition are denied being incorrect. It is stated that Government of Uttar Pradesh vide their letter No. 108/2/356/2002-CX-7 dated 24-8-2002

(Annexure 1) forwarded a representation of Shri Sher Singh. As the representation was not addressed to Central Government, it was returned to them for taking action u/s 8 of NSA-1980 vide this Ministry's letter dated 4-9-2002 (Annexure II). The representation dated 12-8-2002 alleged to have been addressed to Central Government was never received in the office of Respondent No. 1. Hence the averment that the representation made to Respondent No. 1 is still pending is denied."

It is pertinent to mention here that along with the second return Mr. Ramesh Kumar has annexed the representation of the petitioner-detenu, which was forwarded by the State Government of Uttar Pradesh. It is also pertinent to mention that a perusal of the said representation shows that it was addressed to the Home Secretary, Government of Uttar Pradesh, Lucknow.

4. We have examined the averments contained in paragraphs 7 and 8 of the petition and ground No. 28(h) thereof and in the three returns; one filed by the detaining authority and two by Mr. Ramesh Kumar on behalf of Union of India, the opposite party No. 1. It is manifest from the second return filed by Mr. Ramesh Kumar that the representation made by the petitioner to the Union of India has not been sent by the Government of Uttar Pradesh to the Union of India and instead what has been sent by it to the Union of India is the representation of the petitioner-detenu addressed to the Home Secretary, Government of Uttar Pradesh. We are constrained to observe that on account of this gross carelessness of the functionaries of the State Government the petitioner detenu's representation addressed to the Union of India was not despatched to the Union of India. We make no bones for observing that for this inexcusable mistake of the functionaries of State Government, the petitioner cannot be permitted to suffer.

5. In our judgment, on account of the aforesaid mistake the second facet of the fundamental right guaranteed to the petitioner detenu by Article 22(5) of the Constitution of India, namely his right to make a representation at the earliest opportunity, against the detention order, has been violated. It is well settled that implicit in the detenu's fundamental right to prefer a representation to a statutory authority is an inherent obligation on the said authority to also dispose it off at the earliest opportunity.

In our judgment, on account of the laches and gross carelessness of the functionaries of Government of Uttar Pradesh, the aforesaid fundamental right of the detenu has been violated, rendering his continued detention bad in law.

6. In the result we hold that continued detention of the petitioner-detenu Sher Singh cannot be sustained and direct that he be released forthwith unless wanted in some other case.

The writ petition stands finally disposed of in the said manner.