

(2000) 02 AHC CK 0119
In the Allahabad High Court
Case No : Writ Petition No. 598 (H.C.) of 1999

Shoaib Mahmood Kidwai @ Bobby

APPELLANT

Vs

Suptd.Distt.Jail,Lucknow & Ors.

RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:

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

Citation : (2000) 02 AHC CK 0119

Hon'ble Judges : S.H.A.Raza, J and R.D.Mathur, J

Final Decision : Disposed Of

Judgement

1. We have heard Sri Daya Shankar Misra, the Government advocate appearing on behalf of the State of U.P. as well as Sri Ginsh Pandey who has put in appearance on behalf of the Central Government.

2. The only point is the delay in the disposal of the representation of the petitioner sent to the Central Government. The admitted facts of the case in short compass appears to be is that the petitioner under the order of the detaining authority, was detained on 1561999. He sent a representation to the Central Government on 3rd July, 1999, through the jail authorities which was received by the Central Government in the concerned desks of the Central Government on 2071999 through the State of Uttar Pradesh. The representation was processed for consideration in the case of detention and put up before the Under Secretary, Ministry of Home Affairs on 2671999, who considered the same with his comments and put up the same before the Joint Secretary, Ministry of Home Affairs on 2771999, the Joint Secretary considered the same and with his comments put up before tlu Home Secretary on 2771999 who is said to have been delegated the powers to dispose of such cases, by the Union Home Minister. The Union Home Secretary rejected, the representation of the detenu on 2771999.

3. From the aforesaid facts it is evident that there was a considerable delay on

the part of the State Government in sending the representation of the petitioner to the Central Government which was received after on the desk of the Ministry of Home Affairs on 20/7/1999. There is no explanation in the counteraffidavit to indicate as to why the representation of the petitioner reached to the desk of the Ministry of Home Affairs after seventeen days. There was a delay of six days in putting the representation of the petitioner before the UnderSecretary, Ministry of Home Affairs who is with his comments placed before the Joint Secretary of Ministry of Home Affairs on 27/7/1999 and on that date the representation of the petitioner was rejected. No explanation has come forward from the side of the Central Government as to why there was a delay of six days in putting the matter before the UnderSecretary. It seems that at least for six days the file was dusted in the office of the Home Secretary. Only this much has been said in paragraph 10 of the supplementary counteraffidavit that a decision to reject the said representation was taken by the Central Government in the Ministry of Home Affairs within a six days (excluding 24th and 25th July, 1999 being holidays of its effectively becoming available for consideration and thus there was no delay in taking the decision on the representation of the detenu.

4. When the liberty of a citizen is taken away by the detention under the Provisions of the National Security Act it is incumbent upon the authorities concerned to dispose of the representation of the detenu forthwith because that is the only opportunity which is given to a detenu to place before the authorities concerned that his detention was bad. Under Article 22(5) of the Constitution of India reads as under:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority

making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him at the earliest opportunity of making a representation against the order."

5. If the representation of a detenu is not disposed of at the earliest opportunity then the detention of the detenu would be vitiated. As the law of detention is a harsh one and a person when detained under any law the provisions of Article 22(5) of the Constitution of India as well as the National Security Act should be strictly constituted.

6. In a recent decision of this Bench in *Bachchu v. Union of India and others*, habeas corpus, Writ petition No. 37913 of 1999, considering the fact that no explanation has come forward from the District Magistrate to explain the substantial delay which had occasioned in delivering the representations of the petitioner to the Central Government on 21/7/1999. The Division Bench also observed:

"A submission without any foundation was made by Sri Mahendra Pratap, learned A.G.A., that the District Magistrate might have sent the representations through registered post as it was not incumbent upon him to have sent the same through

special messenger. This submission is wide off the mark for one simple reason as the District Magistrate has chosen to forward the representation to the State Government through special messenger. District Magistrate was not relieved of his duty by sending the representations to the State Government through special messenger. He was duty bound to forward the representations to the Central Government through some mode which would not have consumed the period as has taken place in the present case in *Mohar Ali v. State of U.P. and others*, 1999 Cr. R. 640, it was observed by a Division Bench of this Court that a duty is cast on the authorities concerned to take every possible steps for consideration of the representation of the detenu at the earliest without any loss of time by faster and quicker means, which have come up in the modern society. In our view, the callous attitude of the District Magistrate, in the present case is clearly discernible from the fact that he did not realise the implications of his forwarding and transmitting the representations to the Central Government with the speed which they deserved. Perhaps, the District Magistrate was unmindful of the guarantees engrafted in Article 22(5) of the Constitution of India. He allowed the representations to drift in the usual course."

More or less similar observations were made in *Wall Ahmad v. The District Magistrate, Hathras and others, habeas corpus, petition No. 30962 of 1999*, decided on 19/11/1999 wherein it was observed that the representation of the petitioners dated 26/5/1999 was received by the Central Government on 31/5/1999 and the representations of the Guddan 28/5/1999 was received on 3/6/1999 and on their representations on 22/6/1999, because the Central Government was waiting for the decision of the Advisory Board. We need not multiply the authorities on the question that the delay in disposal of the representation affects the liberty of the petitioner but while referred to decision of Hon'ble Supreme Court in *Rajammal v. State of Tamil Nadu*, 1999 SCC (Cr) 93 : 1999(1) JIC 524 (SC); wherein it was observed:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes."

It was further observed in *Rajammal v. State of Tamil Nadu and another*, (supra) that:

"If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very

short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

In the present case the representation was sent by the detenu on 1311998 which reached the Secretary to the Government of Tamil Nadu on 521998. The Government which received remarks from different authorities submitted the relevant files before the UnderSecretary for processing it on the next day. The Undersecretary forwarded it to the Deputy Secretary on the next working day. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 1421998. Though there is explanation for the delay till 921998 there is no explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 142 1998 is not a justifiable explanation when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

7. As stated earlier there are various pronouncements of this Court as well as Hon"ble Supreme Court on that question the authorities need not be multiplied to a reference can be made to a decision of this in *Lallan v. Union of India* through Secretary, (1999 (2) JIC 360 (All) (LB) in which one amongst us Hon"ble S.H.A. Raza, J. was a member, the Division Bench observed:

"In *Siri v. State of U.P*, 1999 (1) JIC 586, a Division Bench of this Court held that representation decided after 8 days of the receipt and the delay of 4 days not explained the detention was found illegal.

In *Laiq Abbas v. District Magistrate, Lucknow and others*, 1999 (1) JIC 589, a Division Bench of this Court found 11 days" delay in consideration of the representation having not properly been explained resulting in the detention having been held illegal.

In *Sarnister v. Superintendent, District Jail, Muzaffarnagar and others*, 1999 (1) JIC 631, a Division Bench of this Court found that the representation of the petitioner not disposed of with promptitude and, therefore, the detention order was quashed.

In *Wall Mohammad v. Superintendent, District Jail, Bulandshahar and others*, 1999U.P. Cr. R. 56 : 1999 (1) JIC 335 (All), a Division Bench of this Court held that no explanation as to why the representation was kept pending for 15 days before it was sent to Central Government the detention thus was set aside.

In *Rajammal v. State of Tamil Nadu and another*, 1999 U.P. Cr. R. 158: 1999 (1) JIC 524 (SC), the representation sent on 131 1998 was rejected on 1421998. It was held that the delay is the interval between the aforesaid two dates and there was no valid justification for it. Detention thus was treated as vitiated. It was further held that in spite of law laid down repeatedly over the past three

decades, the State Government and its officers continue to believe in their old lethargic fashion and like all other files rusting in the Secretariat for various reasons including red tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion.

In Pappu alias Ausan Singh v. Adhikshak, Janpad Karagar, Mainpuri. 1999 1 Cr. R. 23 : 1999 (1) JIC 234 (All), it was found that there was no need for the Government to wait for the report of Advisory Board and delay on that account was not just."

8. Admittedly, there was a delay of about 17 days in putting the representation of the petitioner before the desk of the Ministry of Home Affairs, Government of India, and there was a six days delay in placing the matter before the Home Secretary. Although two days delay sought to be explained on the ground that those days were holidays, but it has not been explained as to whether the Home Secretary or the Minister were available on those holidays. When a citizen is deprived of his liberty, no (sic) representation ought to be decided at the earliest opportunity, the orders could have passed even on holidays if the Home Secretary, or the Home Minister were available on that date at New Delhi. If we exclude two days then the delay of four days in disposal of the representation have not been explained.

9. It seems that the decision of the State or the Central Government have not realised the mandate of the Constitution as contained in Articles 21 and 22(5) of the Constitution of India. As soon as the detenu sends his representation to the Central Government through the jail authorities and the District or the State authorities, the said representation could have been sent through a special messenger to the Central Government and as soon as it would have reached on the desk of the Ministry of Home Affairs it could have been placed directly to the Home Secretary. If processing was considered necessary it can be processed and placed before the Home Secretary within a day or two days. The detention deprives the liberty of a citizen and hence, it would be necessary that the only opportunity which is available to a detenu to make a representation, should be given urgently.

10. We are of the view that in the present case the State Government as well as the Central Government failed to explain the delay caused in sending the representation to the Central Government with promptitude and the disposal of the representation at the earliest opportunity. The petitioner was detained on 16/6/1999 meaning; thereby that he has completed his detention more than six months. Everything can wait but not the deprivation of a citizen to his liberty can wait for a longer time. The petition deserves to be allowed.

11. In view of what has been indicated, hereinabove, the detention order dated 16/6/1999 passed by the District Magistrate, Lucknow is quashed.

The petitioner shall be set at liberty forthwith, if not required in any other case.